



REQUEST FOR PROPOSALS

FOR CONSULTING ENGINEER SERVICES

FOR BATTERY PARK CITY FLOOD

RESILIENCY PROJECTS

ISSUED BY

BATTERY PARK CITY AUTHORITY

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Attachment B – Proposal Submittal Cover Sheet

Attachment C – Draft Consulting Engineer Services Agreement

Attachment D – MBE/WBE/SDVOB Requirements, MBE/WBE & EEO Policy Statement and
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Attachment E – Form of Confidentiality and Non-Disclosure Agreement

REQUEST FOR PROPOSALS
FOR CONSULTING ENGINEER SERVICES
FOR BATTERY PARK CITY FLOOD RESILIENCY PROJECTS

1. INTRODUCTION AND PROJECT SUMMARY

The Battery Park City Authority (d/b/a Hugh L. Carey Battery Park City Authority, “**BPCA**”) hereby requests proposals (individually, a “**Proposal**” and, collectively, the “**Proposals**”) from qualified engineering firms (individually, a “**Proposer**” and, collectively, the “**Proposers**”) to provide BPCA with multidisciplinary design, engineering, permitting, procurement management, contract administration, consulting and related services (as more particularly described herein, the “**CE Services**”) in support of the implementation of BPCA’s Resiliency Projects (defined below).

Created in 1968, BPCA is a New York State public benefit corporation responsible for financing, developing, constructing, maintaining, and operating Battery Park City as a richly diversified mixed use community providing residential and commercial space, with related amenities such as parks, plazas, recreational areas, and a waterfront esplanade.

1.1 Project Background

Since 2014, BPCA has been assessing and undertaking efforts to address the threats of damage and injury to Battery Park City and its residents as a result of future severe storm activity, storm surge and sea level rise associated with global climate change. As a significant part of this effort, BPCA is currently working on four major resiliency projects (the Ballfields and Community Center Project and the South, North, and West BPC Resiliency Projects, as further described below and collectively referred to herein as the “**Resiliency Projects**”) that are intended to provide risk reduction for Battery Park City and its residents with respect to future severe storm activity and sea level rise associated with global climate change. The Resiliency Projects will each provide a set of flood barriers and interior drainage improvements with standalone, independent utility at different locations in Battery Park City. Each (excluding the Ballfields Project) must be capable of connecting with the other Resiliency Projects and, if ultimately funded and built by the City of New York, with the Lower Manhattan Coastal Resiliency Project, which is currently under design and expected to be implemented separately by the City of New York.

Recent amendments (effective in April 2020) to the New York Infrastructure Investment Act, as established in Part F of Chapter 60 of the 2015 Laws of New York and amended from time to time (the “**Design-Build Authorizing Act**”), provide BPCA with the legal authority necessary to implement its Resiliency Projects utilizing the design-build project delivery method. The Design-Build Authorizing Act allows for a best value selection process and authorizes design-build contracts on either a lump sum or guaranteed maximum price (“**GMP**”) basis. A GMP design-build contract allows for a staged, progressive approach to design-build contracting, with the selected design-builder working with the owner to develop the design on a compensated basis to enable the establishment of a GMP at an advanced state of design (typically, 60% design). This progressive design-build (“**PDB**”) process differs from lump sum design-build contracting, which typically involves competing design-build firms proposing a lump sum or fixed price based on a design proposal developed in response to a request for proposals.

BPCA has determined to proceed with a PDB procurement that will combine the North BPC Project and the West BPC Project, while the Ballfields Project and the South BPC Project will proceed separately under the design-bid-build project delivery method. This separate PDB procurement will provide for the design and construction of the combined North and West BPC Projects (the “**Combined North and West PDB Project**”) under a single PDB contract (the “**PDB**

Contract") in accordance with the Design-Build Authorizing Act. Notwithstanding the single PDB Contract, it is expected that the component parts of the Combined North and West PDB Project will have separate GMPs and work packages, allowing for completion of the components of the Combined North and West PDB Project on a phased basis.

1.2 Required Work

The primary focus of the CE Services is to assist BPCA in connection with the procurement and implementation of the Combined North and West PDB Project. However, it is expected that the selected Proposer (the **"Consulting Engineer"**) will also be required, as part of the CE Services, to advise and consult with BPCA concerning programmatic issues associated with all Resiliency Projects, including any system-wide integration issues and the development of an operations and maintenance strategy for the completed Resiliency Projects. The CE Services are described generally in Section 3.1 (Scope of CE Services) below and in more detail in Attachment A (Anticipated Scope of Services) to this Request for Proposals (**"RFP"**).

This RFP provides background information and a description of the expected scope of the CE Services, establishes the Proposal submittal requirements, and defines the process for the selection of the Consulting Engineer. The selected Consulting Engineer and its subcontractors will not be eligible to serve as or perform services for the design-builder (the **"Design-Builder"**) under the separately procured PDB Contract.

2. THE RESILIENCY PROJECTS AND THE CE SERVICES

The Resiliency Projects generally consist of four distinct project areas: the BPC Ballfields & Community Center Resiliency Project (the **"Ballfields Project"**); the South Battery Park City Resiliency Project (the **"South BPC Project"**); the North Battery Park City Resiliency Project (the **"North BPC Project"**); and the West Battery Park City Resiliency Project (the **"West BPC Project"**).

2.1 Background Information

The scope of each of the four Resiliency Projects is generally described below, along with a more detailed description of the Combined North and West PDB Project. Further information on the Resiliency Projects can be found on BPCA's website at <https://bpca.ny.gov/nature-and-sustainability/resiliency/>. Proposers may also wish to review the Lower Manhattan Climate Resiliency Study, providing a framework for the Lower Manhattan Coastal Resiliency Project, at https://edc.nyc/sites/default/files/filemanager/Projects/LMCR/Final_Image/Lower_Manhattan_Climate_Resilience_March_2019.pdf and available on BPCA's website.

BPCA will also make available to Proposers certain documents that have been prepared for the North BPC Project, subject to receipt of an executed confidentiality and non-disclosure agreement in the form set forth in Attachment E (Form of Confidentiality and Non-Disclosure Agreement). Any Proposer that would like to access such documents must have their authorized representative sign and submit such **"Confidentiality and Non-Disclosure Agreement"** to the Designated Contact in accordance with Section 4.3 (Proposer Questions, Clarifications and RFP Addenda) on or before the deadline set forth in Section 4.1 (RFP Schedule). Promptly following receipt of such executed agreement in accordance with this Section and Section 4.3, the Designated Contact will return a countersigned agreement to the Proposer, along with instructions to access such documents over a secure website. A Proposer's use of such documentation will be subject to the terms and conditions of the Confidentiality and Non-Disclosure Agreement.

Information made available on BPCA's website or on the secure website pursuant to the Confidentiality and Non-Disclosure Agreement is for reference and background information only.

Such information may not be current and may reflect status or expectations as of an earlier date. BPCA makes no representation as to the accuracy, completeness, or pertinence of such information for any purpose and will not be responsible for any interpretations thereof or conclusions drawn therefrom.

RESILIENCY MEASURES | BATTERY PARK CITY



2.2 Ballfields Project

The Ballfields Project has been designed to be an interim flood resiliency solution and generally consists of an independent flood barrier system along the eastern, northern, and southern boundaries of the Battery Park City Ballfields located along Route 9A/West Street between Murray and Warren Streets. It is intended to provide flood risk reduction pending completion of the South BPC Project and the North BPC Project component of the Combined North and West PDB Project and is currently being implemented on a design-bid-build basis. Construction of the Ballfields Project is expected to be complete by mid-2021. As such, while the Consulting Engineer will need to be familiar with the Ballfields Project and its relationship to the other Resiliency Projects, it is not expected that the Consulting Engineer will perform significant services in connection with the Ballfields Project.

2.3 South BPC Project

The South BPC Project will provide a continuous flood barrier system from the north side of the Museum of Jewish Heritage, through Wagner Park, across Pier A Plaza, and along the northern border of the Historic Battery, to an end point just west of State Street. In August 2018, BPCA entered into a contract with AECOM USA, Inc. for, among other services, the design of the South BPC Project, which is currently 75% complete. BPCA intends to work with AECOM to complete the design, as well as the environmental review process required under the New York State Environmental Quality Review Act (“**SEQRA**”), for the South BPC Project, and will then bid out the construction of the South BPC Project under various work packages on a design-bid-build basis. BPCA has also entered into a separate construction management contract with LiRo Program and Construction Management, PE P.C to provide BPCA with comprehensive

construction management services for the South BPC Project. Accordingly, while the Consulting Engineer will need to be familiar with the South BPC Project design and to be up to date on the progress of environmental review, permitting and construction, the CE Services will not include primary design, environmental review or construction management services associated with the South BPC Project.

It is currently expected that construction of the South BPC Project will commence in late 2021 and be completed in 2024.

2.4 Combined North and West PDB Project

The primary focus of the CE Services will be to assist BPCA in preparing for, implementing and monitoring the progress of the Combined North and West PDB Project. The Combined North and West PDB Project will join the project areas currently associated with the North BPC Project and the West BPC Project into a single combined project area. In accordance with the Design-Build Authorizing Act, BPCA intends to undertake a separate procurement for the Design-Builder who will be responsible for all aspects of design and construction under the PDB Contract. The cost of the Combined North and West PDB Project is currently estimated to range from approximately \$250 million to approximately \$300 million. Certification by the Federal Emergency Management Agency (“**FEMA**”) will be a required element of the completed Combined North and West PDB Project. The Consulting Engineer will serve as BPCA’s primary technical advisor and owner’s representative in connection with the procurement of the Design-Builder and the administration of the PDB Contract.

2.4.1 Current Status of North BPC Project

In July 2019, BPCA entered into a contract with AECOM USA, Inc. for design services for the North BPC Project. As of the date of this RFP, AECOM has developed an approximately 30% design for the North BPC Project. Based on this 30% design and the planning efforts to date, the North BPC Project is currently anticipated to have its western end point at the intersection of Chambers Street and River Terrace, from whence it will extend east along the Battery Park City North Esplanade, move northward along the Hudson River Bikeway, cross to the east side of West Street/Route 9A, continue north to North Moore Street and then extend east along North Moore to a termination point at Greenwich Street. A variety of different barrier technologies is currently anticipated to be utilized, as appropriate, for specific segments of the alignment. The current design also contemplates the inclusion of an interceptor gate and aboveground control house on the east side of West Street/Route 9A to address the interior drainage needs of the North BPC Project.

With the determination to proceed with the Combined North and West PDB Project, the design of the North BPC Project will not be advanced further under the current design-bid-build model. The Consulting Engineer will be responsible for reviewing the current North BPC Project design and related materials developed to date to help establish the final scope of, and technical requirements related to, the Combined North and West PDB Project.

2.4.2 Current Status of West BPC Project

The West BPC Project contemplates the creation of a new line of flood protection along or adjacent to the Hudson River’s edge to provide a continuous flood barrier capable of ultimate connection to the western terminus of the South BPC Project and the western terminus of the North BPC Project. BPCA received proposals to perform design services for the West BPC Project pursuant to a request for proposals issued in March 2020 but did not select a design engineer or initiate the design of the West BPC Project. With the determination to proceed with the Combined North and West PDB Project, this separate procurement for a design engineer for the West BPC Project has been cancelled.

2.4.3 PDB Procurement

The PDB procurement process for the selection of the Design-Builder will be in accordance with the Design-Build Authorizing Act and will consist of a request for qualifications stage (“**PDB RFQ**”) followed by a request for proposals stage (“**PDB RFP**”).

The PDB RFP will include a draft of the PDB Contract (drafted by BPCA’s legal counsel) and will request shortlisted respondent teams to submit technical and price proposals in accordance with requirements to be specified in the PDB RFP. It is anticipated that technical proposals will describe a proposed technical approach for the Combined North and West PDB Project, but will not include a detailed design solution. For price proposals, BPCA will seek to maximize pricing information that can be submitted on a competitive basis at the RFP stage. This is expected to include, at a minimum, pricing for the Phase 1 preconstruction services described below and the fee payable (on a percent of the cost of the work basis) to the selected Design-Builder for the performance of all design-build services (inclusive of the design-builder’s profit, administration, overhead and risk premium). In accordance with the PDB procurement process, it is not expected that proposers at the PDB RFP stage will propose a lump sum price for completing the Combined North and West PDB Project.

The preliminary procurement schedule for the Combined North and West PDB Project is as follows:

Combined North and West PDB Project Milestone	Estimated Date
Issue PDB RFQ	April 2021
Short-list respondent teams and issue PDB RFP	July/August 2021
Deadline for proposals in response to PDB RFP	October/November 2021
Select Design-Builder and execute PDB Contract	January 2022

2.4.4 PDB Contract

The PDB Contract will be structured to include two primary phases of performance by the Design-Builder: the preconstruction phase (“**Phase 1**”) and the construction phase (“**Phase 2**”). Phase 1 of the PDB Contract will focus on design, planning, permitting and other pre-construction services to be performed by the Design-Builder prior to the execution and delivery of a definitive amendment establishing a GMP and related matters. Phase 2 services will be dependent upon the finalization of a definitive GMP amendment and will involve all work, other than the Phase 1 services, necessary to complete the Combined North and West PDB Project, including design completion, construction, commissioning and acceptance testing of the Combined North and West PDB Project.

It is expected that the key commercial terms governing the performance of the design-build services, including construction, will be included in the PDB Contract as of the initial execution date, with definitive amendments establishing only the applicable GMP, the design upon which it is based and matters such as further details concerning acceptance test procedures and standards. The PDB Contract will address the process for establishing each definitive amendment and will allow for flexibility in establishing a GMP earlier or later than the 60% design, as warranted. The PDB Contract will also allow for early work packages so that construction components requiring a long lead-time or ready for early commencement may begin

on an expedited basis. Further, multiple GMPs may be established so that, for example, if all Phase 1 services are completed with respect to the North BPC Project area and a GMP established, construction may commence on the North BPC Project component while the Design-Builder continues to perform Phase 1 services associated with the West BPC Project component. However, no construction will commence for any component until completion of all required pre-construction activities for the applicable component, the conclusion of the environmental review process and all necessary permits from regulatory agencies have been obtained.

Each GMP will be negotiated on an “open book” basis, with the Design-Builder bound by pricing included in the contract (e.g., the Design-Builder’s fee) and required to competitively bid subcontracted work. If BPCA and the Design-Builder are unable to reach agreement as to a definitive amendment, BPCA will have the right to terminate the PDB Contract, in whole or in part, and proceed with design and construction on a bid-build or other basis.

The PDB Contract will be a performance-based contract, with the Design-Builder responsible for all aspects of design, construction and subcontractor performance. The Design-Builder will be entitled to schedule, price or performance relief only in the event of the occurrence of uncontrollable circumstances that will be specified in the PDB Contract. Successful completion of the Combined North and West PDB Project will require both completion of construction and satisfactory demonstration of project performance through acceptance testing on or before a scheduled completion date.

2.5 Funding of the Resiliency Projects

Funding for the Resiliency Projects is currently expected to be provided through the issuance of bonds by BPCA. No federal funding is anticipated at this time.

3. ANTICIPATED SCOPE OF SERVICES AND CONSULTING ENGINEER SERVICES AGREEMENT

The Consulting Engineer will be responsible for providing the full scope of the CE Services in accordance with the Consulting Engineer Services Agreement (defined below).

3.1 Scope of CE Services

Attachment A (Anticipated Scope of Services) to this RFP sets forth a detailed description of the scope of the CE Services. Certain key elements of the CE Services are as follows:

- A. ***Project Definition and Technical Requirements*** – In accordance with the Design-Build Authorizing Act, the PDB RFP will need to establish the scope of work for the Combined North and West PDB Project, along with the technical requirements that will guide the firms competing to serve as the Design-Builder and ultimately be included in the PDB Contract. Additionally, a clear project definition and technical requirements (along with any necessary technical diligence by the Consulting Engineer, such as geotechnical and other site investigations) will enable BPCA to work with the Consulting Engineer to advance permitting efforts and prepare for environmental review pending the selection of the Design-Builder. These considerations need to be weighed against the desire of BPCA to maximize flexibility for possible design solutions through the PDB procurement and realize the potential benefits of PDB contracting (e.g., transfer of design liability to the Design-Builder, schedule efficiencies, innovation and cost savings). A critical component of the CE Services will be to clearly define the scope of and technical requirements for the Combined North and West PDB Project, including flood barrier elements, interior drainage infrastructure and site enhancements, while assisting BPCA in striking an appropriate balance between technical requirements and flexibility in the PDB procurement. As part of this effort, the Consulting Engineer will be required to review and

evaluate all design information prepared to date for the North BPC Project and, at the direction of and in coordination with BPCA staff, create a conceptual design for the West BPC Project.

- B. ***Design Excellence and Sustainability Requirements*** – Following development of the Cooper Robertson Masterplan, there has long been an established history of design and development of high quality public open spaces within Battery Park City, including seminal works by internationally recognized landscape and urban designers. As part of the technical requirements, the Consulting Engineer will be required to develop design excellence requirements associated with site enhancements that balance the rich design legacy of the public open spaces with climate adaptation needs. Additionally, the technical requirements developed by the Consulting Engineer will need to address goals outlined in the BPC Sustainability Plan and Green Guidelines available at <https://bpca.ny.gov/nature-and-sustainability/sustainability/>.
- C. ***Acceptance Test Procedures and Standards; Schedule Requirements*** – The technical requirements developed by the Consulting Engineer will include appropriate acceptance test procedures and standards to be included in the PDB Contract to define successful completion of the Combined North and West PDB Project. The Consulting Engineer will also be required to develop a reasonable projected schedule for the performance of the design-build services and to determine appropriate target milestones to be included in the PDB RFP, including for the successful completion of acceptance testing.
- D. ***SEQRA Requirements and Advance Permitting Efforts*** – As BPCA’s primary technical advisor for the Combined North and West PDB Project, the Consulting Engineer will be responsible for managing the environmental review process for the Combined North and West PDB Project in coordination with BPCA and its environmental legal counsel. In addition, based on the project definition and technical requirements developed by the Consulting Engineer, the Consulting Engineer will advise BPCA regarding, and develop and implement a plan for, permitting efforts that would be appropriate in advance of Design-Builder selection for the overall benefit of the Combined North and West PDB Project. The Consulting Engineer will facilitate active and regular communication and coordination with all relevant federal, state and local agencies and entities as the project definition and technical requirements are established.
- E. ***Community and Stakeholder Outreach and Coordination*** – The Consulting Engineer will need to ensure that the project definition and technical requirements for the Combined North and West PDB Project are discussed with, informed by, and have the general support of the Battery Park City community, the Tribeca community, and Manhattan Community Board 1. The Consulting Engineer will provide assistance and support to BPCA in the formulation of legal agreements, as necessary, with impacted property owners and other stakeholders and will ensure that the project definition and technical requirements are consistent with such agreements. The Consulting Engineer will be required to coordinate, in conjunction and consultation with BPCA staff, community and stakeholder outreach efforts throughout all phases of the Combined North and West PDB Project, including the formulation and implementation of an approved community outreach and engagement plan that is coordinated with the responsibilities to be specified for the Design-Builder under the PDB Contract.
- F. ***PDB Procurement*** – The Consulting Engineer will assist BPCA throughout the PDB procurement process, including in the development of the PDB RFQ, the review and evaluation of responses to the PDB RFQ, the development of the PDB RFP, the review and evaluation of proposals in response to the PDB RFP and by providing advice and consultation in respect of technical and procurement management issues as they arise. Upon the selection of the Design-Builder pursuant to the PDB procurement process, the

Consulting Engineer will assist BPCA as part of its advisory team in connection with the negotiation, finalization and approval of the PDB Contract with the Design-Builder.

- G. **PDB Contract, Phase 1 Services** – During the Phase 1 services, the Consulting Engineer will be responsible for reviewing and commenting on design and other preconstruction submittals by the Design-Builder, reviewing and monitoring progress by the Design-Builder, reviewing and approving payment applications, and serving as BPCA’s primary technical advisor in respect of the Phase 1 services, including in connection with the negotiation and finalization of any early work package and each definitive GMP amendment.
- H. **PDB Contract, Phase 2 Services** – The Consulting Engineer will continue to serve as BPCA’s primary technical advisor in respect of the administration of the PDB Contract during the performance of Phase 2 services, responsible for matters such as review and approval of payment applications, monitoring progress and evaluating milestone completion, and assessing the technical merits of any claims made by the Design-Builder under the PDB Contract.
- I. **Other CE Services** – BPCA intends to utilize the Consulting Engineer as a general technical resource as it implements the Resiliency Projects. In connection with the Ballfields Project and the South BPC Project, the Consulting Engineer may be requested from time to time to advise on discrete technical, coordination and programmatic issues that may arise over the course of the engagement. In addition, BPCA has determined that a coordinated strategy for the operations and maintenance of the completed Resiliency Projects is necessary and expects to work with the Consulting Engineer to develop and implement such a strategy. This is expected to involve coordination with other public entities responsible for operations and maintenance solutions for other resiliency projects in lower Manhattan, including public entities responsible for the coordination of flood control deployment decisions in lower Manhattan. This may also involve assisting BPCA in connection with a possible procurement for a separate operations and maintenance contractor on a coordinated basis with the Combined North and West PDB Project. The Consulting Engineer will be expected to assist BPCA in determining the appropriate operations and maintenance strategy.

Each Proposer must be capable of and prepared to provide all CE Services described in Attachment A and must ensure that they or, as applicable, their collective teams incorporate and include appropriate expertise in all disciplines required to perform the CE Services. BPCA reserves the right to disqualify any Proposer that does not demonstrate such capability and expertise in their Proposal.

3.2 Draft Consulting Engineer Services Agreement

As set forth in Attachment B (Proposal Submittal Cover Sheet) to this RFP, Proposers are required to agree to negotiate in good faith to enter into a “**Consulting Engineer Services Agreement**” with BPCA that reflects the substantive terms and conditions of this RFP and the Proposal. A draft Consulting Engineer Services Agreement is set forth in Attachment C (Draft Consulting Engineer Services Agreement) to this RFP, containing the terms and conditions for the performance of the CE Services that are expected by BPCA. To the extent a Proposer takes exception to any term or condition contained in Attachment C, such exceptions must be clearly identified and detailed (by redline of requested changes or otherwise) in an appendix to the Proposal labeled “Appendix: Exceptions to Draft Consulting Engineer Services Agreement.” BPCA reserves the right to decline to negotiate any term or condition that is not reflected in such appendix to the Proposal.

It is anticipated that the term of the Consulting Engineer Services Agreement will commence in February 2021 and continue through completion of the Combined North and West PDB Project in October 2025.

4. PROCUREMENT PROCESS

4.1 RFP Schedule

The Consulting Engineer procurement schedule is as follows:

Consulting Engineer Procurement Milestone	Estimated Date
Issue the RFP	November 12, 2020
Pre-Proposal Conference	November 18, 2020 (11:00 a.m. Eastern)
Submittal of Confidentiality and Non-Disclosure Agreement	No later than November 19, 2020 (5:00 p.m. Eastern)
Proposer Questions concerning the RFP Due	No later than December 3, 2020 (5:00 p.m. Eastern)
BPCA Answers to All Questions Provided	No Later than December 10, 2020
Proposal Due	No later than December 17, 2020 (5:00 p.m. Eastern)
Interviews (If required by BPCA)	January 4, 2021 to January 8, 2021
Selection of Preferred Proposer	January 2021
Execution of the Consulting Engineer Services Agreement	February 2021

BPCA reserves the right to modify any or all of the above dates at its sole discretion at any time during this procurement process.

4.2 Pre-Proposal Conference

A pre-Proposal conference will be held via GoToMeeting for the benefit of all Proposers on November 18, 2020 at 11:00 a.m. Eastern time, as indicated above in Section 4.1 (RFP Schedule). Proposers should RSVP for the pre-Proposal conference via email to the Designated Contact (identified below) by no later than Tuesday, November 17, 2020 at 12:00 p.m. Eastern time.

4.3 Proposer Questions, Clarifications and RFP Addenda

Any questions and requests for information or clarifications related to this procurement from interested parties, Proposers and any of their representatives, including any request for access to the secure website pursuant to Section 2.1 (Background Information), must be made in writing to the “**Designated Contact**” at BPCA by the date and time established in Section 4.1 (RFP Schedule) via e-mail to:

Michael LaMancusa

Assistant Contracting Officer
michael.lamancusa@bpca.ny.gov

Written communications must include the requestor's name, e-mail address, and the Proposer represented. E-mails must include "BPCA Consulting Engineer RFP" in the subject line. Responses to all timely and appropriate questions will be posted to the BPCA website. Any RFP addenda will also be posted to the BPCA website at <http://www.bpca.ny.gov/apply/rfp-opp/>. All Proposers are solely responsible for checking and complying with any RFP addenda.

Proposers can rely only upon information in this RFP, RFP addenda and BPCA's written responses to RFP questions submitted in accordance with this Section 4.3. BPCA will not be responsible for nor be bound by any oral instructions, interpretations, or explanations made by BPCA or its representatives. Please refer to Section 7.2 (Restricted Period) for further restrictions on communications during the Restricted Period (defined below).

4.4 Interviews

BPCA may opt to invite any or all of the Proposers to participate in one or more interviews with the Selection Committee (defined below). Interviews may be conducted for any reason determined appropriate by BPCA, including to further assess the Proposer's capability to perform the CE Services or to seek information related to any evaluation criterion. If BPCA elects to conduct interviews, applicable Proposers will be notified in writing with instructions for participation and such interviews will be required. BPCA reserves the right to limit the number of Proposers to be interviewed and to require specific key personnel identified in the Proposal to participate in the interview.

4.5 No Reimbursement for Proposer Expenses

BPCA accepts no liability for the costs or expenses incurred by the Proposers in responding to this RFP, responding to clarification requests, participating in interviews, preparing any resubmittals or in connection with any other activities included as part of this procurement process. Each Proposer that enters into this procurement process shall prepare the required submittals at its own expense and with the express understanding that they cannot make any claims whatsoever for reimbursement from BPCA or from any of its employees, advisors or representatives for the costs and expenses associated with the process, including, but not limited to, costs of preparation of the Proposal, loss of anticipated profits, loss of opportunity or for any other loss, cost or expense.

4.6 Amendment or Withdrawal of Proposals

A Proposer that submits a Proposal prior to the due date and time specified in this RFP may amend its Proposal by submitting an amended Proposal, clearly labeled "Amended Proposal – Consulting Engineer Services for Battery Park City Flood Resiliency Projects," as long as the amended Proposal is submitted on or before the due date and time specified by this RFP. Any such amended Proposal shall be submitted in accordance with Section 5.1.1 (Proposal Submittal) such that Technical Proposal amendments and Cost Proposal amendments are submitted separately. A Proposer may withdraw its Proposal at any time before the Proposal due date specified in this RFP by delivering a written request for withdrawal to the Designated Contact.

4.7 BPCA Reserved Rights

BPCA reserves, without limitation, and may exercise at its discretion, the rights set forth below. These rights are in addition to and shall not limit any of the specific rights or conditions provided in this RFP. BPCA expressly reserves the right to:

- A. Waive any minor defect, irregularity, or technicality in the Proposals received;
- B. Cancel or reissue this RFP in whole or in part at any time;
- C. Require additional information from one or more Proposers to supplement or clarify the Proposals submitted, including the correction of arithmetic or other apparent errors for the purpose of ensuring a full and complete understanding of the Proposal and/or to determine a Proposer's compliance with the requirements of this RFP;
- D. Conduct further investigations with respect to the qualifications and experience of each Proposer, or any team member included in a Proposal, and to request additional evidence to support any such information;
- E. Interview one or more of the Proposers, in BPCA's sole discretion, in order to obtain clarification of information provided by the Proposer;
- F. Disqualify any Proposer that fails to comply with this RFP, submits a nonconforming, nonresponsive, incomplete, inadequate, or conditional Proposal, or is otherwise deemed during any stage of the procurement process to be unqualified or unable (due to inadequate financial capacity, litigation, past-performance or otherwise) to perform the CE Services;
- G. Conduct Consulting Engineer Services Agreement negotiations with any Proposer who has tentatively been awarded the Consulting Engineer Services Agreement, including the next highest ranked Proposer should BPCA be unsuccessful in negotiating with the selected Proposer;
- H. Negotiate and make changes to any of the terms and conditions of the Consulting Engineer Services Agreement within the scope of this RFP;
- I. Request one or more best-and-final offers from two or more Proposers determined by BPCA to have a reasonable chance of being selected as the Consulting Engineer;
- J. Utilize any and all ideas or information included in the Proposals received or obtained through the course of the procurement process;
- K. Decide not to award a Consulting Engineer Services Agreement as a result of this procurement, for any reason;
- L. Issue one or more addenda to this RFP to extend the due date for the Proposals or for any other reason; and
- M. Take any other action affecting the procurement process or the Resiliency Projects that would be in the best interests of BPCA.

4.8 Freedom of Information Law

All information submitted in response to this RFP is subject to the Freedom of Information Law, Article 6 of the New York State Public Officer's Law ("**FOIL**"), which requires public access to certain documents possessed by BPCA, unless a specific exemption applies. Proposers are responsible for identifying any information in their respective Proposals considered to be

confidential and exempt from FOIL. However, BPCA is obligated to disclose information consistent with the requirements of FOIL, New York State Public Officer's Law Section 87.

5. PROPOSAL REQUIREMENTS

5.1 General Instructions

Proposers must follow the requirements stated in this RFP. Adherence to these requirements will ensure a fair and objective analysis of each Proposal. Proposals that do not meet the submittal requirements may be deemed to be non-responsive and may be rejected.

The submittal guidelines outlined in this Section govern the format and content of the Proposal and the approach to be used in the preparation of the Proposer's response to this RFP. The Proposer is advised to provide information essential to the understanding and evaluation of the Proposal. The Proposal should provide a clear, concise description of the Proposer's capabilities and approach to satisfy the requirements of this RFP.

5.1.1 Proposal Submittal

Proposers must submit one electronic copy of the Technical Proposal (defined below) and one electronic copy of the separate Cost Proposal (defined below), in each case, in the form of a single Adobe Portable Document Format (PDF) file, to BPCA on or before 5:00 p.m. Eastern Time on the date set forth in Section 4.1 (RFP Schedule). Proposals received after this deadline will not be considered. Proposals shall be addressed and submitted via email in accordance with the following:

- A. **Technical Proposals** – Each Proposer must e-mail their Technical Proposal to the following e-mail address:

technicalproposals@bpca.ny.gov.

The Technical Proposal must be attached to the email and clearly labeled as "Proposal Enclosed – Consulting Engineer Services for Battery Park City Flood Resiliency Projects."

- B. **Cost Proposals** – Each Proposer must separately e-mail their Cost Proposal to the following e-mail address:

costproposals@bpca.ny.gov.

The Cost Proposal must be attached to the separate email and clearly labeled as "Cost Proposal – Consulting Engineer Services for Battery Park City Flood Resiliency Projects."

5.1.2 Proposal Format and Length

The submitted Proposal must be organized in accordance with the subheadings of Proposal contents set forth in Section 5.2 (Contents of the Proposal). Proposals shall be prepared with paper size no larger than standard 8 1/2" x 11" and a minimum font size of 11 point, with reasonable exceptions for charts, graphics and financial information. Proposal pages must be numbered, with the Proposer's name and "BPCA Consulting Engineer RFP Proposal" clearly marked on the cover of each of the Technical Proposal and the Cost Proposal.

The Proposal shall be separately packaged into two components:

- A. A **“Technical Proposal”** containing the information required in Section 5.2.1 (Proposal Submittal Cover Sheet, Introductory Letter and Table of Contents) through Section 5.2.9 (BPCA Mandatory Forms) of this RFP, in the order they are listed in Section 5.2 (Contents of the Proposal); and
- B. A **“Cost Proposal”** containing the information required in Section 5.2.10 (Cost Proposal) of this RFP.

The Technical Proposal shall not include any cost or pricing information that is included in the Cost Proposal.

The Technical Proposal shall be limited to 35 pages. This page limit excludes the Proposal Cover Sheet (defined below), any revisions to the draft Consulting Engineer Services Agreement, key personnel resumes required by Section 5.2.5, financial information required by Section 5.2.8, and all BPCA mandatory forms required by Section 5.2.9. Proposers should, however, submit a Proposal that provides the information requested in this RFP in a clear, concise, and complete manner.

There is no page limit for the Cost Proposal.

5.2 Contents of the Proposal

Proposals must address the items identified in this Section in the order specified below.

5.2.1 Proposal Submittal Cover Sheet, Introductory Letter and Table of Contents

The Technical Proposal must include a Proposal submittal cover sheet, in the form set forth in Attachment B (Proposal Submittal Cover Sheet) to this RFP (**“Proposal Cover Sheet”**), and an introductory letter.

The introductory letter must include the following:

- A. The legal name of the Proposer and the address of the primary office that will be providing the CE Services;
- B. An executive summary of the Technical Proposal, including highlights, key features, and distinguishing points; and
- C. Confirmation of the terms and conditions of this RFP, including the Proposer’s understanding and acceptance of BPCA’s policy that the Proposer and its team members, if selected to provide the CE Services, will not be eligible to serve as or perform services for the Design-Builder under the PDB Contract.

5.2.2 Project Team; Organizational/Management Structure

Each Technical Proposal shall include:

- A. The legal name of each of the members of the Proposer team, including any proposed subcontractors.
- B. A description of the Proposer team, including the management structure, the settled or proposed contractual relationship between members of the Proposer team, and the overall organizational structure;

- C. An organization chart, at the corporate level, showing the relationship between members of the Proposer team and BPCA; and
- D. An organization chart, at the key personnel level, showing reporting relationships between, and the authority of, the key personnel and other individuals that will report to them to indicate the proposed approach/management structure for the performance of the CE Services.

This section of the Technical Proposal should clearly identify the key team members, including key personnel, any proposed subcontractors and other specialists, and describe the proposed management and organizational structure for the performance of the CE Services. This section of the Technical Proposal should also provide a proposed staffing plan, including identification of individuals (by title or position) beyond the key personnel.

Key personnel, including the CE Services Director (defined in Attachment A), shall be identified by name, title, and specific roles and responsibilities. The Technical Proposal shall describe the Proposer's expectations with respect to the percent of time each individual identified as key personnel will be exclusively committed during each phase of the performance of the CE Services. Factors addressed in this description should include the procedures for coordinating with pertinent BPCA staff members and keeping BPCA apprised of the status of, and any issues associated with, the CE Services. Under this evaluation criterion, the Selection Committee will focus on the overall Proposer team structure, including its organizational and management approach, to evaluate how the Proposer team is structured to provide all required CE Services, the efficiency of its management approach and how the Proposer team proposes to interact and coordinate with BPCA. Firm and personnel qualifications will not be evaluated under this evaluation criterion, but will be evaluated as described in Section 5.2.4 (Firm Qualifications) and Section 5.2.5 (Personnel Qualifications), respectively.

5.2.3 Approach

The Proposer shall provide a full description of how the team will approach the execution of the CE Services. The Proposer shall describe the proposed approach for addressing all required services detailed in Attachment A (Anticipated Scope of Services) of this RFP, identify any potential issues and key actions to address, eliminate, or minimize those issues, and describe procedures for controlling changes in scope, schedule, cost, and quality. As part of this description, each Proposal shall set forth the Proposer's approach to finalizing the Project Definition (as defined in Attachment A), including the Proposer's views as to the level of detail necessary for the Project Definition, approach to evaluating existing design and related background information, and the expected timeline for obtaining BPCA approval of both the conceptual Project Definition necessary for PDB RFQ issuance and the final Project Definition necessary for PDB RFP issuance. For all CE Services, the Proposer may suggest approaches that have been used successfully in other similar engagements and which may provide BPCA with better service delivery. Proposers should also provide a description of their environmentally sustainable business practices and activities.

The Selection Committee will evaluate the proposed approach to delivering all elements of the CE Services, including the extent to which the Proposal demonstrates that the Proposer understands BPCA's objectives, the scope of the Resiliency Projects, the PDB contracting approach for the Combined North and West PDB Project and the Consulting Engineer's role. This evaluation criterion will focus on the quality of approach and methodology for the performance of the CE Services reflected in the Technical Proposal.

5.2.4 Firm Qualifications

The Technical Proposal shall include a brief professional work history of relevant projects, as it relates to the capabilities of the Proposer team, including the proposed contracting entity, any joint venture member and any subcontractors. Relevant projects should include only projects that had significant involvement by individuals who will be assigned to perform CE Services. The following should be addressed:

- A. Describe relevant projects by name, type, location and date, that best characterize high level work quality and cost control. Provide detailed information on the type of project work done, with comparison to the requested CE Services. Identify the roles of the proposed key team members for the CE Services who were involved in the referenced project and their specific work responsibilities;
- B. Describe the Proposer's experience with alternative delivery methods, particularly the PDB delivery method;
- C. List the types and length of experience the Proposer's firm has with respect to large-scale urban flood resiliency projects and the design, administration and oversight of such projects;
- D. Describe the extent of the Proposer's experience with respect to operations and maintenance of flood resiliency projects; and
- E. Describe the Proposer's experience with coordinating and leading permitting and regulatory processes for similar projects, including in particular preparing environmental impact statements, managing environmental review processes and managing FEMA certification/accreditation processes.

The Selection Committee will evaluate the Proposer's experience and expertise for the performance of the CE Services, focusing on the foregoing areas and the Proposer team as a whole.

5.2.5 Personnel Qualifications

The Proposer shall provide resumes for key personnel. Each such resume shall not exceed two pages in length, but should identify the role of the proposed key person and provide sufficient information to enable the Selection Committee to understand and evaluate their professional qualifications and experience.

Factors to be addressed in this section of the Technical Proposal include the extent of the experience of specific personnel on the Proposer team in managing projects on a PDB basis and with respect to large-scale urban resiliency projects, as well as in leading permitting and regulatory processes for similar projects. This should include, without limitation, experience of various key personnel in (a) preparing technical requirements for similar projects; (b) preparing environmental impact statements, managing environmental review processes and managing FEMA certification/accreditation processes; (c) cost estimation, validation and negotiation of GMPs; and (d) serving in an owner's advisory capacity for the design and construction of critical infrastructure projects. The Selection Committee will evaluate the experience and expertise of the proposed Key Personnel in these and all other aspects of the CE Services.

BPCA stresses the need for continuity and for this reason it expects that no changes of key personnel by the selected Consulting Engineer team will be made throughout the duration of the performance of the CE Services. As provided in the draft Consulting Engineer Services

Agreement, substitutions or removal of key personnel on the selected Consulting Engineer team will not be permitted without prior approval by BPCA. In the event of the permissible unavailability of an individual serving as key personnel (as provided in the Consulting Engineer Services Agreement), a replacement individual of equivalent skill, experience and reputation must be proposed for approval by BPCA.

5.2.6 MBE/WBE & EEO Policy Statement and Diversity Practices Questionnaire

Proposers shall complete the MBE/WBE & EEO Policy Statement and Diversity Practices Questionnaire included in Attachment D (MBE/WBE/SDVOB Requirements, MBE/WBE & EEO Policy Statement and Diversity Practices Questionnaire) and provide each required utilization plan specified in such Attachment D.

5.2.7 References

Please include the names of three references from similar projects. Reference contact information should include the name of the project and the name of the individual providing reference, as well as their role on the reference project, email, and phone number. By providing this information, each Proposer authorizes BPCA and its representatives to contact any of the provided references for any purpose, including gathering information and documentation in connection with this RFP and the evaluation of the Proposal.

5.2.8 Financial Information

Provide a copy of your firm's most recent audited financial statements (within the last year). In the event you do not have audited financials you must provide a statement to that effect with your Technical Proposal, and summary financial information for the calendar year most recently ended.

Proposers must also provide a completed W-9 Form.

5.2.9 BPCA Mandatory Forms

Proposers must complete and include with their Technical Proposal all mandatory forms which can be found at: <https://bpca.ny.gov/wp-content/uploads/2015/03/Mandatory-Forms.pdf>.

These mandatory forms include the following:

- A. Vendor Responsibility Questionnaire
- B. Certificate of No Change
- C. Statement of Non-Collusion
- D. Minority Business Enterprise/Women Business Enterprise (MBE/WBE) Utilization Plan
- E. Service Disabled Veteran-Owned Businesses (SDVOB) Utilization Plan
- F. Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j(3) and §139-j (6)(b)
- G. Offerer's Certification of Compliance with State Finance Law §139-k (5)

H. Offerer's Disclosure of Prior Non- Responsibility Determinations

In addition, any exception to any term or condition contained in Attachment C (Draft Consulting Engineer Services Agreement) must be included in an appendix to the Technical Proposal in accordance with Section 3.2 (Draft Consulting Engineer Services Agreement) of this RFP.

5.2.10 Cost Proposal

The Consulting Engineer will be compensated on a time and materials basis, subject to a not-to-exceed amount in accordance with the Consulting Engineer Services Agreement. The Cost Proposal shall include a listing of all proposed fees, including proposed hourly rates for each key personnel, generic positions/titles that may be used in the course of performance of the CE Services, and labor categories for support staff. The proposed hourly rates should cover all salary costs, fringe benefits, payroll taxes, general and administrative expenses (including insurance), and profit.

The Cost Proposal shall also list the categories of reimbursable expenses for which the Proposer will expect separate reimbursement. Expense categories that are not identified will not be reimbursed separately but are assumed to be included in the hourly rates. Reimbursable expenses of the Consulting Engineer will be paid at cost and without markup in accordance with the Consulting Engineer Services Agreement.

The Cost Proposal shall also include a proposed not-to-exceed amount for the performance of the CE Services, including a sublimit for each CE Services task described in Attachment A (Anticipated Scope of Services). Such proposed not-to-exceed amount shall be in the format provided in Appendix 2 (Compensation) of the Consulting Engineer Services Agreement. In connection with such proposed not-to-exceed amount, each Proposer shall provide a detailed listing of all associated assumptions and qualifications, which shall be consistent with any assumption stated in Attachment A. The proposed not-to-exceed amount should not include the performance of services identified as Additional Services in Attachment A.

The proposed fees and reimbursable expenses, including the proposed not-to-exceed amount, will be subject to negotiation. Hourly rates should be comparable to rates used on similar projects for governmental agencies and non-profit organizations. Any mark up on subcontractors and other direct expenses should be reasonable and clearly identified. Hourly rates shall be fixed and not subject to escalation for the first twelve months after execution of the Consulting Engineer Services Agreement, and thereafter may be increased annually based on the percentage change from January to January in the All Urban Consumers All Items Consumer Price Index in the New York-Newark-Jersey City area, not seasonally adjusted, as published by the Bureau of Labor Statistics at https://www.bls.gov/regions/new-york-new-jersey/news-release/consumerpriceindex_newyorkarea.htm.

The Cost Proposal should include a discussion on how the Proposer has provided cost savings for the services the Proposer has provided to other clients and provide specific examples of how internal practices, processes, methods, or economies were utilized and passed along to the client. Such discussion should be limited to the extent applicable to the Proposal and indicate the extent similar practices will be employed in the performance of the CE Services.

6. EVALUATION AND SELECTION PROCESS

6.1 Technical Proposal Evaluation

Following the Proposal due date established in Section 4.1 (RFP Schedule) of this RFP, a committee of BPCA employees selected by BPCA (the "**Selection Committee**") will review the

Technical Proposals. Technical Proposals that are determined to be non-responsive may be rejected prior to being scored. Responsive Technical Proposals will be evaluated by the Selection Committee out of a total possible score of 100 points, according to the set of submittal criteria outlined below and set forth in Section 5 (Proposal Requirements). Information gained during the optional interview (Section 4.4) and any reference checks (Section 5.2.7) will also be considered in arriving at final scores. While only Selection Committee members will score Proposals, the Selection Committee may consult with other BPCA employees or officials and with BPCA's advisory team (identified in Section 7.7 (BPCA Advisory Team)) in the evaluation of Proposals. Before final selection, BPCA must determine that the proposed selected Proposer is responsible, in accordance with applicable law and BPCA's Procurement Guidelines, which may be viewed at www.bpca.ny.gov/public-information.

Evaluation Criteria	Total Possible Evaluation Points
Project Team; Organizational/Management Structure (Section 5.2.2)	10 points
Approach (Section 5.2.3)	30 points
Firm Qualifications (Section 5.2.4)	25 points
Personnel Qualifications (Section 5.2.5)	25 points
Diversity (Section 5.2.6)	10 points
TOTAL	100 points

More detailed descriptions of the evaluation criteria can be found in the sections referenced in the table above.

6.2 Cost Proposal Evaluation and Basis of Award

The Consulting Engineer Services Agreement will be awarded to the Proposer with the highest scoring Technical Proposal, as determined pursuant to Section 6.1 (Technical Proposal Evaluation) and subject to a determination by BPCA that the Proposer's Cost Proposal is fair, reasonable, and provides the best value to BPCA given the requirements of the Resiliency Projects.

7. ADDITIONAL BPCA PROCUREMENT REQUIREMENTS

7.1 MBE/WBE/SDVOB Participation, Joint Ventures, and Subcontracting Goals

Contractor requirements and procedures for business participation opportunities for New York State certified MBEs/WBEs/SDVOBs and equal employment opportunity requirements relating to minority group members and women are attached as Attachment D (MBE/WBE/SDVOB Requirements, MBE/WBE & EEO Policy Statement and Diversity Practices Questionnaire). For questions relating to MBE/WBE/SDVOB participation, joint ventures and sub-contracting goals only, please contact the "**MBE/WBE/SDVOB Designated Contact**": Justin McLaughlin Williams at Justin.McLaughlin-Williams@bpca.ny.gov or 212-417-2337.

7.2 Restricted Period

New York State's State Finance Law Sections 139-j and 139-k apply to this RFP, restricting Proposers' contact with BPCA. Proposers are restricted from making contact (defined as oral, written or electronic communications with BPCA under circumstances where a reasonable person would infer that a communication was intended to influence BPCA's conduct or decision with respect to a procurement) with anyone other than the Designated Contact or the

MBE/WBE/SDVOB Designated Contact during the period from the date of publication of the notice of this RFP in the New York State Contract Reporter through approval of the Consulting Engineer Services Agreement by BPCA (the “**Restricted Period**”). Employees of BPCA are required to record certain contacts during the Restricted Period, including, but not limited to, any oral, written or electronic communications that could reasonably be seen as intended to influence BPCA’s conduct or award under this RFP. Upon notice of an improper contact, BPCA shall make a determination regarding the Proposer’s eligibility to continue participating in this procurement process. Failure of a Proposer to comply with these requirements may result in disqualification of the Proposer from the procurement process.

7.3 Non-Collusion

By submitting a Proposal, Proposers warrant and represent that any ensuing Consulting Engineer Services Agreement has not been solicited or secured directly or indirectly in a manner contrary to the laws of the State of New York, and that said laws have not been violated and shall not be violated as they relate to the procurement or the performance of the Consulting Engineer Services Agreement by any conduct, including the paying or giving of any fee, commission, compensation, gift, or gratuity or consideration of any kind, directly or indirectly, to any member of the board of directors, employee, officer or official of BPCA.

7.4 Iran Divestment Act

By submitting a Proposal or by assuming the responsibility of any Consulting Engineer Services Agreement awarded hereunder, Proposers certify that they are not on the “Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012” list (“**Prohibited Entities List**”) posted on the New York State Office of General Services website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certify that they will not utilize any sub consultant that is identified on the Prohibited Entities List in connection with the Consulting Engineer Services Agreement. The selected Proposer agrees that should it seek to renew or extend any Consulting Engineer Services Agreement awarded hereunder, it must provide the same certification at the time the Consulting Engineer Services Agreement is renewed or extended. The selected Proposer also agrees that any proposed assignee of the Consulting Engineer Services Agreement will be required to certify that it is not on the Prohibited Entities List before BPCA may approve a request for assignment of the Consulting Engineer Services Agreement.

During the term of any Consulting Engineer Services Agreement awarded hereunder, should BPCA receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, BPCA will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the New York State Iran Divestment Act of 2012 within 90 days after the determination of such violation, then BPCA shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the selected Proposer in default of the awarded Consulting Engineer Services Agreement.

BPCA reserves the right to reject any request for renewal, extension, or assignment for an entity that appears on the Prohibited Entities List prior to the renewal, extension, or assignment of the Consulting Engineer Services Agreement, and to pursue a responsibility review with the selected Proposer should it appear on the Prohibited Entities List hereafter.

7.5 Encouraging Use of New York State Businesses in Contract Performance

New York State businesses have a substantial presence in New York State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity

and leadership in doing business in New York State, Proposers for the Consulting Engineer Services Agreement for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the Consulting Engineer Services Agreement. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Proposers are strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, Proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current New York State law.

Utilizing New York State businesses in New York State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the Consulting Engineer's optimal performance under the Consulting Engineer Services Agreement, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve New York State's economic engine through promotion of the use of New York State businesses by its contractors. New York State therefore expects bidders/proposers to provide maximum assistance to New York State businesses in their contracts. The potential participation by all kinds of New York State businesses will deliver great value to New York State and its taxpayers.

Proposers can demonstrate their commitment to the use of New York State businesses by responding to the question about New York State businesses included in the Proposal Cover Sheet (Attachment B) of this RFP.

7.6 Insurance Requirements

The Consulting Engineer will be required to obtain and provide (or require their subcontractors to obtain and provide as applicable) the insurance described in Appendix 5 (Required Insurance) of the draft Consulting Engineer Services Agreement set forth in Attachment C (Draft Consulting Engineer Services Agreement) of this RFP. The total cost of such insurance shall be included in the fees set forth in the Cost Proposal.

7.7 BPCA Advisory Team

BPCA has engaged advisors to assist in the development of the Combined North and West PDB Project. These advisors will be ineligible for participation with any respondent team in connection with any procurement for the Combined North and West PDB Project.

The advisory team currently consists of the following:

Hawkins Delafield & Wood LLP (Procurement and Construction Counsel)

Sive Paget & Riesel, PC (Environmental Counsel)

ATTACHMENT A
ANTICIPATED SCOPE OF SERVICES

ATTACHMENT A

ANTICIPATED SCOPE OF SERVICES

It is BPCA's expectation that this Attachment A will, upon finalization with the selected Proposer, be inserted in its entirety into Appendix 1 (Scope of Base Services) of the executed Consulting Engineer Services Agreement.

Capitalized terms used in this Attachment and not defined herein have the meaning set forth in this RFP.

TASK 0. GENERAL PROGRAM MANAGEMENT

The Consulting Engineer shall be responsible for delivering the CE Services described in this Task 0 (General Program Management) throughout the performance of all other CE Services, as necessary or required herein. The Consulting Engineer acknowledges and agrees that due to the generally applicable nature of the CE Services described in Task 0, the costs associated with such services are incorporated into the not-to-exceed amounts established for the other tasks described herein, as set forth in Appendix 2 (Compensation) of the Consulting Engineer Services Agreement.

- A. General Role of the Consulting Engineer. The Consulting Engineer shall act as the technical representative of BPCA to provide for (1) the procurement of the Combined North and West PDB Project in accordance with best industry practice and (2) the design and construction of the Combined North and West PDB Project by the Design-Builder in accordance with the PDB Contract and within the established budget and schedule. The Consulting Engineer shall work under the direction of BPCA and in conjunction and cooperation with counsel and other consultants and contractors retained by BPCA. BPCA will make all strategic and policy decisions concerning the Combined North and West PDB Project. The Consulting Engineer shall also assist BPCA, on an as needed basis, with certain aspects of the other Resiliency Projects (as discussed below).
- B. CE Services Director. Given the nature and complexity of the CE Services, BPCA has determined that the highest possible level of management expertise must be applied in order to carry out and complete the CE Services successfully. In order to meet the management needs of the CE Services, the CE Services shall be directed by a full-time senior management executive serving as the "**CE Services Director**," with overall responsibility for oversight and management of the CE Services. The CE Services Director must be dedicated exclusively to the CE Services. The CE Services Director may be an employee of the Consulting Engineer, an employee of a Consulting Engineer partner or joint venture member, or an employee of a subconsultant to the Consulting Engineer. The Consulting Engineer must agree that the individual serving as the CE Services Director will not be proposed or assigned to other projects and will not work on other projects prior to substantial completion of the Combined North and West PDB Project. As further described in Section 3.6 of the Consulting Engineer Services Agreement, in the event of the permissible unavailability of the individual serving as the CE Services Director, a replacement individual of equivalent skill, experience and reputation must be proposed for approval by BPCA. The CE Services Director shall report regularly and frequently to BPCA, and advise and consult with senior BPCA officials and management regarding schedule, status, budget, design, work quality, preparation for operations, and any issues that may affect successful completion of the CE Services. The CE Services Director will be responsible to BPCA for all aspects of the CE Services. The CE Services Director is expected to establish and supervise a streamlined and efficient administrative program for the CE Services

with the goal of real-time decision-making and implementation that facilitates timely completion of the CE Services and the Combined North and West PDB Project. The CE Services Director must have the authority to manage all personnel provided by the Consulting Engineer.

- C. Progress Meetings. The Consulting Engineer shall attend regular progress meetings, as needed, with BPCA and its consultants no less frequently than once every two (2) weeks; however, the frequency of such progress meetings may at various stages of the CE Services be greater than once every two (2) weeks, at the discretion and direction of BPCA. The Consulting Engineer shall prepare an appropriate agenda in advance of each such meeting and, following each such meeting, promptly submit to BPCA a summary documenting the meeting minutes, including all attendees, key issues discussed, decisions made and open items. The Consulting Engineer shall distribute, upon BPCA's approval, copies of the meeting minutes to attendees.
- D. Monthly Reports. The Consulting Engineer shall furnish to BPCA a report when necessary but on at least a monthly basis containing (1) the status of the Combined North and West PDB Project; (2) a comparison of the Project Budget (as further described below) to the actual costs incurred through the date of the report; (3) a comparison of the Project Schedule (as further described below) to the work actually completed through the date of the report; (4) any proposed revision to the Project Schedule or Project Budget (each subject to BPCA approval), with an explanation of the reasons for any such proposed revision; (5) a summary of the CE Services budget, including amounts billed by task over the last month, amounts billed by task cumulatively to date, and the amount of budget remaining for each task; (6) a summary of any stakeholder or community issues or concerns that are outstanding; (7) a description of other relevant issues, problems or concerns that BPCA should be made aware of and how the Consulting Engineer proposes to address them; (8) a summary of change orders made during the period covered by the report; (9) a list of all pending change orders and all outstanding issues requiring action or approval by BPCA; (10) the status of any governmental approvals, environmental review and other regulatory requirements related to the Combined North and West PDB Project; (11) a description of the CE Services planned for the next three months; and (12) any other information concerning the CE Services as BPCA may reasonably request.
- E. Project Management Information System. The Consulting Engineer shall establish a project management information system for use in administering the CE Services, which shall include but not be limited to providing an organized filing system for all documents and records pertaining to the CE Services, storing project related data, storing correspondence, preparing monthly variance reports, and reviewing and forwarding to BPCA for payment invoices from the Design-Builder. Unless otherwise approved by BPCA, the project management information system selected by the Consulting Engineer shall utilize and/or be compatible with the Procore project management software currently utilized by BPCA.
- F. Cost Estimating. The Consulting Engineer shall provide an initial cost estimate of the Combined North and West PDB Project to BPCA as part of the finalization of the conceptual Project Definition (discussed below) and shall update and revise such cost estimate at the subsequent intermediate and near-final stages of Project Definition development. For each cost estimate, the Consulting Engineer shall: (1) develop cost estimating guidelines and consistency-control for all cost estimating; (2) develop base capital cost estimates for all components of the Combined North and West PDB Project, including opinion of probable PDB Contract price and appropriate contingencies; and (3) develop operations and maintenance cost estimates for the Combined North and West PDB Project. Prior to preparing its cost estimates, the

Consulting Engineer shall establish and review with BPCA the framework of its cost estimates, including any assumptions regarding mark-ups and contingencies. Throughout the PDB procurement, the Consulting Engineer shall notify BPCA of any changes that would cause a variance between its cost estimate and the actual cost of the Combined North and West PDB Contract and shall update and revise its cost estimate, as appropriate, based on BPCA-approved changes. The Consulting Engineer shall also update and revise its cost estimate, as appropriate, in connection with the selection of the Design-Builder, which update shall include an explanation of any changes in the established cost estimate. The Consulting Engineer shall thereafter track its established cost estimate with the performance of the Phase 1 services by the Design-Builder, notify BPCA (with detailed explanation) of any expected variance, and provide BPCA with a written comparison of its established cost estimate and any cost estimate or GMP proposal prepared by the Design-Builder pursuant to the PDB Contract.

- G. Project Budget. The Consulting Engineer shall assist BPCA in establishing a “**Project Budget**” based, initially, on cost estimating by the Consulting Engineer, as discussed above, and, ultimately on each GMP established under the PDB Contract. The Project Budget will cover all costs associated with the Combined North and West PDB Project. The Consulting Engineer shall manage the Project Budget in coordination with the Project Schedule to monitor cash flow, maximize value, keep the work progressing in a logical manner, and avoid or mitigate interruptions to design and construction. The Consulting Engineer shall recommend appropriate levels of contingency to carry during all phases of the Combined North and West PDB Project. The Project Budget shall be updated on a quarterly basis by the Consulting Engineer (subject to BPCA approval) until the Combined North and West PDB Project is put into operation.
- H. Project Schedule. The Consulting Engineer shall develop a high level schedule for the Combined North and West PDB Project including the various major activities to be undertaken in connection with the Combined North and West PDB Project and the timing of the commencement and completion of such activities, which the Consulting Engineer shall monitor and revise from time to time throughout the Combined North and West PDB Project (the “**Project Schedule**”). The Project Schedule shall identify benchmark and milestone dates including time when actions or decisions are required by BPCA for the establishment of the Project Definition and the subsequent design, construction and substantial completion of the Combined North and West PDB Project. The Project Schedule shall be updated on a monthly basis by the Consulting Engineer (subject to BPCA approval) until the Combined North and West PDB Project is put into operation and shall be coordinated with scheduling requirements to be placed on the Design-Builder under the PDB Contract.
- I. Stakeholder, Community and Public Engagement. The Consulting Engineer will be required to attend meetings and prepare presentations, reports and graphics as needed to communicate with relevant agencies, government entities, regulatory bodies, the Battery Park City community, the Tribeca community, Manhattan Community Board 1, impacted property owners, the public and other relevant stakeholders. Such communications and presentations shall be subject to the advance review and approval of BPCA. The Consulting Engineer shall formulate and implement an approved community outreach and engagement plan that covers the period before selection of the Design-Builder and specifies an allocation of the respective responsibilities of the Consulting Engineer and the Design-Builder after selection of the Design-Builder. The Consulting Engineer shall recommend an appropriate scope for the Design-Builder’s public outreach and stakeholder engagement efforts for approval by BPCA and coordinate with the Design-Builder in

the performance of such approved scope. The outreach and engagement plan should allow for:

1. Frequent coordination with stakeholders and project partners;
2. Opportunities for regular community updates and feedback;
3. Design iterations that are responsive to community concerns;
4. Accommodation of stakeholder organizational review processes;
5. Interactive design opportunities and activities;
6. Active web-based interface opportunities; and
7. Periodic large- and small-scale meetings and presentations.

As part of its public outreach and stakeholder engagement efforts prior to selection of the Design-Builder, the Consulting Engineer shall provide assistance and support to BPCA in the formulation of legal agreements, as necessary, with impacted property owners and other stakeholders. The Consulting Engineer will be responsible for ensuring that the Project Definition is consistent with such agreements and informed by its public outreach and stakeholder engagement efforts.

The Consulting Engineer shall facilitate active and regular communication and coordination with all relevant federal, state and local agencies and entities as it develops the Project Definition and as otherwise necessary for the performance of the CE Services.

TASK 1. INITIAL START-UP ACTIVITIES

- A. Program Management Work Plans. The Consulting Engineer shall provide a program management work plan, including a scope management plan, staffing plan, quality assurance/quality control plan and initial overall resiliency program schedule, addressing the Combined North and West PDB Project planning period, the procurement period, the design development period and the construction period. Such materials shall be provided to BPCA within twenty (20) days of the execution of the Consulting Engineer Services Agreement. The program management work plan will provide a complete road map for all development and implementation aspects of the program and will document the roles, responsibilities, policies, requirements, and systems that will be utilized to ensure effective implementation of the Combined North and West PDB Project and performance of the CE Services.
- B. Introductory Meetings. Prior to commencing any other CE Services (other than Task 1(A) (Program Management Work Plans) and Task 1(C) (Review of All Currently Available Information)), the Consulting Engineer shall conduct an introductory meeting with BPCA and its consultants to allow for an open exchange of information pertinent to the CE Services and the Combined North and West PDB Project. Following such introductory meeting, the Consulting Engineer shall establish a detailed list of contacts for, and attend initial meetings with, relevant and interested organizations, stakeholders, governmental entities, agencies and departments, community groups and boards, and affected businesses and property owners. It is expected that up to ten (10) separate initial meetings may be necessary in addition to the introductory meeting with BPCA. Further meetings with interested organizations

and stakeholders will be required during the performance of the CE Services, as discussed under Task 0 (General Program Management) above.

- C. Review of All Currently Available Information. The Consulting Engineer shall review and familiarize itself with all currently available information relating to the Combined North and West PDB Project and, to the extent necessary for Combined North and West PDB Project purposes and as otherwise directed by BPCA, all other Resiliency Projects. This is expected to include but not be limited to: existing site plans; as-built drawings; geotechnical records; pile and relieving platform drawings and load bearing capacity analyses; property and utility surveys; title, easement and ground lease reports and documentation; transit maps and drawings; Lower Manhattan Coastal Resiliency guidelines; marine and boating operations documentation; and FEMA flood risk maps. As part of this effort, the Consulting Engineer shall familiarize itself with all reports (including peer review reports), design documentation, drawings, modeling, and other documentation generated to date for the North BPC Project and the South BPC Project.
- D. Conceptual Project Definition Development. The Consulting Engineer shall assist BPCA in further refining and revising the Combined North and West PDB Project definition based on all diligence, technical work, stakeholder engagement and all other CE Services performed prior to PDB RFP issuance. This project definition, including all technical requirements developed by the Consulting Engineer for the PDB procurement (the “**Project Definition**”), will serve as the basis for the PDB procurement and environmental review process and will guide planning and development efforts prior to the selection of the Design-Builder. The Project Definition will include, without limitation, flood barrier elements, interior drainage infrastructure and site enhancements.

As part of the program management plan developed pursuant to Task 1(A) (Program Management Work Plans), the Consulting Engineer shall develop a timeline and process for the establishment of the Project Definition. This timeline and process shall provide for finalization of the Project Definition on a coordinated basis with the PDB procurement schedule reflected in the RFP, include key decision points for BPCA, and factor in coordination with stakeholders and the performance of all other CE Services. It is anticipated that the Project Definition will be established in two primary stages, each subject to BPCA approval: (1) a conceptual Project Definition that will guide further background technical information and technical requirements to be developed by the Consulting Engineer for the PDB RFP and (2) a final Project Definition for purposes of the PDB RFP. The conceptual Project Definition stage will need to be established as part of this Task 1 (Initial Start-Up Activities), for purposes of PDB RFQ issuance and will involve a preliminary submittal by the Consulting Engineer to BPCA for approval.

TASK 2. COMBINED NORTH AND WEST PDB PROJECT TECHNICAL REQUIREMENTS DEVELOPMENT (PRE-PDB CONTRACT)

- A. Project Definition Finalization. Following BPCA approval of the conceptual Project Definition described in Task 1(D) (Conceptual Project Definition Development), the Consulting Engineer shall develop all documents necessary for the final Project Definition, with (at a minimum) submittals to BPCA at both an intermediate and near-final stage of completion. The requirements and timing for each such submittal shall be proposed by the Consulting Engineer in its program management work plan and updated upon BPCA approval of the conceptual Project Definition. Each Project Definition submittal, including the preliminary, intermediate and near-final submittal, shall be reviewed with BPCA and its consultants for approval and shall

address comments provided in respect of the prior submittal. The final Project Definition documentation shall be of sufficient detail to enable issuance of the PDB RFP, as determined by BPCA in consultation with the Consulting Engineer and other BPCA advisors, and shall be consistent with all requirements of applicable law. The final Project Definition will be established upon approval by BPCA of all technical information and requirements developed by the Consulting Engineer for inclusion in the PDB RFP.

B. Development of Background Technical Information. The Consulting Engineer shall develop any background information necessary for the PDB procurement in accordance with best industry practices. This is expected to include, but not be limited to, site surveys, hazardous substance investigations, and geotechnical investigations deemed necessary to manage and implement a successful PDB procurement of the Combined North and West PDB Project. Such background technical information should, at a minimum, assess and quantify the vulnerability of the Combined North and West PDB Project area to the risks associated with a 100-year storm event in the year 2050 coupled with a 100-year, 24-hour rainfall event or more than the 95th percentile precipitation event. The exact scope of the planning efforts and extent of technical background information necessary for the PDB procurement will be determined by BPCA in consultation with the Consulting Engineer and other BPCA advisors as part of the finalization of the conceptual Project Definition, taking into account the availability and reliability of existing technical information. However, the CE Services may include, and the Consulting Engineer must be capable of:

1. Performing any and all geotechnical, topographic, utility, and sewer surveys of the anticipated project area and any adjacent areas that may be impacted by the Combined North and West PDB Project;
2. Providing a geotechnical survey of the sites upon which the Combined North and West PDB Project is expected to be constructed;
3. Performing hydrologic modeling to confirm the extent of potential protection afforded by any proposed flood barrier system; and
4. Creating a coastal model and an interior drainage model as aids to determining the level of Battery Park City flood risk to be addressed by the Combined North and West PDB Project and the effectiveness of potential risk reduction approaches. In creating such models, the Consulting Engineer must reconcile any real or apparent conflicts that exist with the same models created for the South BPC Project.

Based upon the results of the completed surveys and the modeling performed, BPCA may ask the Consulting Engineer to formulate a set of preliminary barrier, interior drainage, and other risk reduction concepts and alignments for Battery Park City and the anticipated sites upon which the Combined North and West PDB Project is expected to be constructed, identifying specific advantages and disadvantages associated with each concept and alignment with respect to considerations of (a) risk reduction effectiveness; (b) degree of difficulty of construction; (c) cost; (d) extent and nature of impacts to public and community accessibility, usability and visual aesthetics; (e) non-BPCA property interest impacted; (f) complexity of permitting; (g) expected time required to complete construction; (h) projected longevity; and (i) flexibility and adaptability for future, increased levels of risk reduction. Such concepts and alignments shall be presented to BPCA and other stakeholders for comment and

feedback, and then modified, revised and refined for purposes of finalizing the Project Definition.

- C. Technical Requirements. The Consulting Engineer shall prepare all generally applicable technical requirements to be included in the PDB RFP and PDB Contract, which will guide teams competing to serve as the Design-Builder and be binding on the selected Design-Builder under the PDB Contract. As part of the scope of the CE Services, the Consulting Engineer shall recommend technical requirements for inclusion in the PDB RFP and PDB Contract, recognizing that BPCA seeks to maximize the expected benefits of PDB contracting (e.g., transfer of design liability to the Design-Builder, schedule efficiencies, innovation and cost savings) while establishing a clear Project Definition and expediting overall project delivery. BPCA anticipates that the Consulting Engineer will evaluate and, as appropriate, utilize the work done to date for the North BPC Project in developing these technical requirements. The Consulting Engineer will also be responsible for developing, in coordination with BPCA and its other advisors, the scope of the Phase 1 services to be performed by the Design-Builder.

As part of the technical requirements, the Consulting Engineer shall develop design excellence requirements associated with site enhancements that balance the rich design legacy of the public open spaces in Battery Park City with climate adaptation needs. Additionally, in developing the technical requirements the Consulting Engineer shall address goals outlined in the Sustainability Plan and Green Guidelines adopted by BPCA.

- D. Acceptance Test Procedures and Standards. The Consulting Engineer shall develop the initial performance-based acceptance test procedures and standards for the Combined North and West PDB Project, which will be included in the draft PDB Contract issued in the PDB RFP. The Consulting Engineer shall assist BPCA and its legal counsel with converting such acceptance test procedures and standards into contractually binding performance requirements to be included in the PDB Contract. The Design-Builder will be required to design and build the Combined North and West PDB Project so that it meets or exceeds all established acceptance test procedures and standards.
- E. Property and Rights-of-Way Acquisition. The Consulting Engineer shall advise and assist BPCA in all activities necessary to obtain any and all property or rights-of-way necessary for the Combined North and West PDB Project and access thereto.
- F. Risk Management. The Consulting Engineer shall meet with BPCA and its risk management and insurance consultants to discuss, and make recommendations regarding, the development and implementation of an effective risk management program for the Combined North and West PDB Project.

TASK 3. ENVIRONMENTAL REVIEW AND OTHER PERMITTING

- A. Environmental Impact Statement. The Consulting Engineer shall be the primary contractor responsible for managing the environmental review process for the Combined North and West PDB Project in coordination with BPCA and its environmental legal counsel, including advising as to the appropriate scope of the environmental review process. For purposes of the Cost Proposal, Proposers should assume that this will involve preparing an environmental impact statement (“**EIS**”) in accordance with SEQRA for the Combined North and West PDB Project and that such effort will include: a formal scoping process, including a public scoping meeting; preparation of an environmental assessment form; preparation of a draft EIS in

accordance with SEQRA and City Environmental Quality Review Act (“**CEQR**”) requirements; and preparation of a final EIS following public review and comment. Proposers should further assume that an EIS and appropriate determinations will need to be made for the Combined North and West PDB Project before the Design-Builder may be authorized to proceed with construction.

- B. Identification of Other Permitting Bodies and Related Interactions. The Consulting Engineer shall (1) coordinate with BPCA in identifying any governmental and quasi-governmental authorities having jurisdiction over the Combined North and West PDB Project, as well as any other organizations that may have an interest in the Combined North and West PDB Project; (2) coordinate with agencies having permit responsibilities for the Combined North and West PDB Project; (3) assist BPCA and the Design-Builder in obtaining necessary permits for the Combined North and West PDB Project; (4) assist in determining whether and which permits should be obtained prior to selection of the Design-Builder; (5) represent BPCA, as deemed necessary or beneficial by BPCA, at meetings of the applicable governmental bodies and other stakeholders; and (6) recommend to BPCA appropriate policies or decisions to be followed on public matters affecting the Combined North and West PDB Project.
- C. Combined North and West PDB Project Permits. The Consulting Engineer shall manage the regulatory and permitting processes with all regulatory agencies prior to the selection of the Design-Builder, and provide the necessary technical expertise and advice to assist BPCA and the Design-Builder in obtaining all permits or approvals required for the Combined North and West PDB Project. The Consulting Engineer will advise BPCA and develop a plan for advance permitting efforts prior to Design-Builder selection that would be appropriate based on the Project Definition and PDB procurement process. Permitting work may include preparing draft permit applications (including supporting graphics and technical write-ups); preparing meeting materials; attending meetings; and general technical advice. The Consulting Engineer will also be required to assist BPCA in determining which permits will ultimately continue to be a Consulting Engineer/BPCA-managed permit and which permits will become Design-Builder-managed permits following execution of the PDB Contract.

Permits required for the Combined North and West PDB Project may include, but are not limited to, approvals from the following agencies and other approvals: New York State Department of Environmental Conservation, U.S. Army Corps of Engineers, U.S. Coast Guard, FEMA, approvals required under SEQRA and CEQR, New York State Historic Preservation Office, New York City Department of Environmental Protection, Port Authority of New York and New Jersey, New York City Department of Transportation, New York City Department of City Planning, New York State Department of Transportation, and New York City Public Design Commission.

FEMA certification will be a required element of the completed Combined North and West PDB Project. The Consulting Engineer shall identify all requirements under Chapter 44 of the Code of Federal Regulations, Part 65.10 for certification of floodwall and deployable sections, interior drainage systems, and operations and maintenance plans for the Combined North and West PDB Project. The Consulting Engineer shall ensure that all such requirements are covered by the Project Definition and included in the technical requirements of the PDB Contract. The Consulting Engineer shall be responsible for the monitoring and oversight of the Design-Builder’s compliance with all required elements for FEMA certification, including, but not limited to:

1. Provision of a registered professional engineer certification of the 65.10 package.

2. Comparison of the FEMA approved coastal model with floodwall crest design elevations and verification that the barrier system is a minimum of two (2) feet above the surge elevation, one (1) foot above the wave elevation, and higher than the wave run-up.
3. Design of all deployables as structural parts of the barrier system, with a comprehensive testing plan for readiness during an event. Structural elements and foundations must be designed with appropriate strength for the erosive actions of currents, waves, wind, and debris. Any foundational seepage or settlement potential will also be confirmed for acceptability against the requirements of 65.10.
4. Evaluation of pluvial factors to calculate any significant residual ponding from direct rainfall runoff during an event.
5. Development of an operations and maintenance plan, including the operation, training, and readiness testing for the deployables. The plan must include documentation of the flood warning system to be used in an event and develop the emergency preparedness plans for the system. Maintenance activities, frequency, and responsibilities must also be detailed as part of the plan. Additionally, the plan will document the procedures that should be followed for any future modifications to the system.

TASK 4. DEVELOPMENT OF PDB CONTRACT PROCUREMENT DOCUMENTS

- A. Commenting on Procurement Documents. As detailed above, the Consulting Engineer will be primarily responsible for all technical information to be included in the procurement documents (PDB RFQ and PDB RFP) prepared by BPCA and its legal counsel. The Consulting Engineer will also be required to review and comment on all other aspects of such procurement documents and advise BPCA with respect to procurement matters, including, without limitation, the establishment of appropriate scoring and selection criteria.
- B. Evaluation of Submittals and Proposals. The Consulting Engineer shall assist BPCA in reviewing for responsiveness and evaluating, from a technical standpoint, all submittals and proposals received from respondents and proposers pursuant to the PDB RFQ and PDB RFP processes. Throughout the PDB procurement, the Consulting Engineer shall assist BPCA in preparing responses to proposer questions, interviewing proposers if applicable, and evaluating proposed changes to the PDB RFQ, PDB RFP and draft PDB Contract. The Consulting Engineer shall advise BPCA on the technical and cost implications associated with proposed changes, the determination of the shortlist for the PDB RFP and, ultimately, selection of the Design-Builder. The Consulting Engineer shall provide advice and consultation in respect of technical and procurement management issues as they arise throughout the course of the PDB procurement.
- C. Draft PDB Contract Comments and Negotiations. The Consulting Engineer shall (1) review and comment on the draft PDB Contract to be included in the PDB RFP; (2) provide all technical information necessary to complete the PDB Contract; and (3) assist BPCA's counsel in negotiating the final PDB Contract with the selected proposer.

TASK 5. PDB CONTRACT PHASE 1 SERVICES PRECONSTRUCTION OVERSIGHT

- A. Meetings with the Design-Builder. The Consulting Engineer shall attend regular meetings with the Design-Builder related to the development of the design of the Combined North and West PDB Project.
- B. Review and Comment of Design-Builder's Design Documents. The Consulting Engineer shall review and comment on the drawings and specifications for the Combined North and West PDB Project, as they are prepared by the Design-Builder. The Consulting Engineer shall assist BPCA in the evaluation and recommendation of appropriate alternatives in light of BPCA's overall resiliency program, impacts to and compatibility with the community, permitting and applicable legal requirements, the Project Budget, the Project Schedule, the independent cost estimates developed by the Consulting Engineer, incorporation of design excellence principals, and adherence to BPCA sustainability standards; provided that the Consulting Engineer shall not assume any of the Design-Builder's responsibilities for design or construction means, methods or costs.
- C. Compliance with Technical Requirements in the PDB Contract. The Consulting Engineer shall review and comment on the drawings and specifications for the Combined North and West PDB Project and ensure that such design documents do not deviate from or conflict with the technical requirements included in the PDB Contract.
- D. Design Development. Pursuant to the PDB Contract, the Design-Builder will be solely responsible and liable for the design of the Combined North and West PDB Project. The Consulting Engineer, however, shall (1) serve as the lead technical advisor to BPCA in reviewing and coordinating the preparation by the Design-Builder of its design documents for the Combined North and West PDB Project; and (2) make recommendations regarding alternative solutions or appropriate course of action whenever design details appear to conflict with any technical requirement included in the PDB Contract or adversely affect construction feasibility, the Project Budget or the Project Schedule.
- E. Acceptance Test Procedures and Standards Finalization. The Consulting Engineer shall assist BPCA in developing and negotiating with the Design-Builder any further details associated with the performance-based acceptance test procedures and standards for the Combined North and West PDB Project that may be necessary in connection with the GMP negotiations and any definitive amendment to the PDB Contract.
- F. Early Work Packages. The Consulting Engineer shall assist BPCA in the review, evaluation and negotiation of any early work packages proposed by the Design-Builder for construction components requiring a long lead-time or so that construction components ready for early commencement may begin on an expedited basis.
- G. GMP Negotiations. The Consulting Engineer shall, upon receipt from the Design-Builder of each proposed GMP submittal (including the design upon which it is based), lead BPCA in reviewing such materials and negotiating the appropriate final GMP to be established prior to the commencement of any physical construction work (including in connection with any work authorized by an early work package amendment). It is likely that the Combined North and West PDB Project will be divided into multiple GMP packages, in a staged manner, in order to accelerate the overall construction schedule and minimize construction disturbances to surrounding

residents and businesses. The Consulting Engineer shall review and assist in the negotiation of each such GMP package and definitive amendment to the PDB Contract.

The Consulting Engineer must, through its own employees or through a subconsultant, provide for an independent contractor perspective in connection with the costing and negotiating effort associated with each GMP. BPCA will require a clear second opinion of cost to use in evaluating GMP proposals, supported by significant relevant contractor experience on an independent basis.

TASK 6. PDB CONTRACT PHASE 2 WORK CONSTRUCTION OVERSIGHT

- A. Meetings with the Design-Builder. During construction, the Consulting Engineer shall (1) represent BPCA as primary technical advisor in its communications with the Design-Builder; (2) attend progress meetings with the Design-Builder and BPCA; (3) attend regular on-site meetings to review construction progress; and (4) provide appropriate recommendations to BPCA concerning BPCA's decisions on construction matters.
- B. PDB Contract Change Orders. The Consulting Engineer shall (1) assist and review the processing of change orders; (2) advise BPCA concerning the necessity for, scope of and recommended cost of change orders; and (3) negotiate, on BPCA's behalf and as directed by BPCA, all change orders with the Design-Builder in accordance with the PDB Contract. The Project Budget and Project Schedule, as applicable, will be revised to reflect approved change orders. The Consulting Engineer shall assist BPCA and its legal counsel in connection with any dispute resolution process involving the Design-Builder.
- C. Review of Design-Builder Payment Applications. The Consulting Engineer shall review applications for payment by the Design-Builder based on the GMP model, which requires substantiation of the actual cost of the work and limits compensation to the GMP and the terms of the PDB Contract. The issuance of a certificate for payment by the Consulting Engineer after reviewing the Design-Builder's payment application and associated receipts shall constitute a representation by the Consulting Engineer that the Design-Builder is entitled to payment under the PDB Contract in the amount certified.
- D. Schedule Monitoring. The Consulting Engineer shall review, evaluate and advise BPCA regarding all construction schedules developed by the Design-Builder, including each proposed schedule of values and related documentation. The Consulting Engineer shall monitor the Design-Builder's progress and scheduling, including compliance with the scheduling and schedule update requirements of the PDB Contract. In the event of delays impacting the critical path schedule, the Consulting Engineer shall advise BPCA as to the cause(s) of such delays and make recommendations to BPCA for corrective action by the Design-Builder.
- E. Notification of Deficiencies in Design-Builder Work. The Consulting Engineer shall notify BPCA if the Consulting Engineer becomes aware that the work of the Design-Builder is not being performed in accordance with the requirements of the PDB Contract, including the design and construction requirements established by the PDB Contract. As appropriate, the Consulting Engineer shall have authority, with written authorization from BPCA, to require additional inspection or testing of the work in accordance with the provisions of the PDB Contract. The Consulting Engineer shall (1) review any and all test reports and notify BPCA and the Design-Builder, as appropriate, of deficiencies in the work of which the Consulting Engineer becomes

aware; (2) advise BPCA of projected consequences of such deficiencies; and (3) make recommendations to BPCA with respect thereto. With the written authorization of BPCA, the Consulting Engineer shall reject work which does not conform to the requirements of the PDB Contract.

- F. Notification of Security, Safety or Health Issues. The Consulting Engineer shall promptly inform BPCA if the Consulting Engineer becomes aware of any security, safety or health issues relating to the Combined North and West PDB Project.

TASK 7. COMBINED NORTH AND WEST PDB PROJECT COMPLETION AND PDB CONTRACT CLOSEOUT

- A. Substantial Completion and Punch List Items. The Consulting Engineer shall attend on-site reviews of the Combined North and West PDB Project to confirm substantial completion of the construction of the Combined North and West PDB Project. The Consulting Engineer shall notify BPCA when the Consulting Engineer believes the work under the PDB Contract is substantially complete and that a punch list should be prepared.
- B. Acceptance Testing and Final Completion. The Consulting Engineer shall observe all acceptance tests required by the PDB Contract and determine when and if the Design-Builder has met the requirements specified in the PDB Contract for the successful completion of such acceptance tests. The Consulting Engineer shall also review punch list items for completion and determination of final completion under the PDB Contract and shall accompany BPCA on any final walk through.
- C. PDB Contract Closeout. The Consulting Engineer shall monitor the final closeout of the PDB Contract by (1) assuring the Design-Builder has obtained all government approvals required for completion of the Combined North and West PDB Project, including, but not limited to, FEMA certification; (2) obtaining all warranties, guarantees, bonds, insurance certificates and other items required pursuant to the PDB Contract; (3) obtaining all affidavits, waivers, and releases the Design-Builder is required to provide to achieve final completion of the Combined North and West PDB Project; (4) analyzing all claims (including change order disputes and other claims for extra compensation) asserted by the Design-Builder; (5) collecting and otherwise resolving any and all backcharge claims that BPCA may assert against the Design-Builder, including assistance with any legal proceedings instituted by BPCA or the Design-Builder; and (6) participating as BPCA technical advisor at meetings and inspections held to resolve problems relating to the design or physical condition of the Combined North and West PDB Project.
- D. Transfer of Project Records to BPCA. The Consulting Engineer shall transfer all project records to BPCA, including: (1) consent of surety or sureties to any reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying BPCA against liens; (3) the Design-Builder's final record drawings of the Combined North and West PDB Project; and (4) any other documentation required of the Design-Builder under the PDB Contract.

TASK 8. OTHER CE SERVICES

- A. General Resiliency Projects Technical Support. BPCA intends to utilize the Consulting Engineer as a general technical resource as it implements the Resiliency Projects. In connection with the Ballfields Project and the South BPC Project, the Consulting Engineer may be requested from time to time to advise on discrete

technical, coordination and programmatic issues that may arise over the course of the engagement. The Consulting Engineer should assume one hundred (100) hours of time being devoted to general technical support for the Resiliency Projects. If BPCA requires the Consulting Engineer to spend more than such assumed number of hours on general Resiliency Projects technical support, such additional effort will be subject to the Additional Services provisions of the Consulting Engineer Services Agreement.

- B. Long Term Operation and Maintenance Support. BPCA has determined that a coordinated strategy for the operations and maintenance of the completed Resiliency Projects is necessary and expects to work with the Consulting Engineer to develop and implement such a strategy. This is expected to involve coordination with other public entities responsible for operations and maintenance solutions for other resiliency projects in lower Manhattan, including public entities responsible for the coordination of flood control deployment decisions in lower Manhattan. This may also involve assisting BPCA in connection with a possible procurement for a separate operations and maintenance contractor on a coordinated basis with the Combined North and West PDB Project. The Consulting Engineer shall assist BPCA in determining the appropriate operations and maintenance strategy. The Base Services (as defined in the Consulting Engineer Services Agreement) do not include the preparation of separate operation and maintenance procurement or contract documents (i.e., documents independent of the PDB procurement and contract documents for the Design-Builder), but such services may be authorized as Additional Services under the Consulting Engineer Services Agreement.

ATTACHMENT B
PROPOSAL SUBMITTAL COVER SHEET

ATTACHMENT B

PROPOSAL SUBMITTAL COVER SHEET

_____ (“the Proposer”) hereby submits its Proposal in response to the Request for Proposals for the Consulting Engineer Services for Battery Park City Flood Resiliency Projects (“RFP”) issued by the Battery Park City Authority (“BPCA”) on November 11, 2020. As a duly authorized representative of the Proposer, I hereby certify, represent, and warrant, on behalf of the Proposer team, as follows in connection with the Proposal:

1. The Proposer acknowledges receipt of the RFP and the following addenda:

No.	Date
_____	_____
_____	_____
_____	_____

2. The submittal of the Proposal has been duly authorized by, and in all respects is binding upon, the Proposer.

3. The name of the legal entity that will execute the Consulting Engineer Services Agreement is _____.

4. All information and statements contained in the Proposal are current, correct and complete, and are made with full knowledge that BPCA will rely on such information and statements in selecting the successful Proposer and executing the Consulting Engineer Services Agreement.

5. The Proposer and its key personnel have all current and valid licenses, registrations and certificates required by applicable law to submit this Proposal and for provision of the services described in the RFP.

6. The Proposer is authorized to do business in the State of New York and, in the case of architects and engineers, is licensed to practice in the State of New York.

7. The principal contact person who will serve as the interface between BPCA and the Proposer for all communications during the Restricted Period is:

NAME: _____
TITLE: _____
ADDRESS: _____

PHONE _____
FAX: _____
E-MAIL: _____

8. If selected, the Proposer agrees to negotiate in good faith to enter into a Consulting Engineer Services Agreement that reflects the substantive terms and conditions of the RFP (including the scope of services) and the Proposal.

9. The Proposer has submitted all forms required to be submitted by the RFP and such forms are a part of this Proposal.

10. The Proposer hereby warrants and represents that any ensuing Consulting Engineer Services Agreement has not been solicited or secured directly or indirectly in a manner contrary to the laws of the State of New York, and that said laws have not been violated and shall not be violated as they relate to the procurement or the performance of the Consulting Engineer Services Agreement by any conduct, including the paying or giving of any fee, commission, compensation, gift, or gratuity or consideration of any kind, directly or indirectly, to any member of the board of directors, employee, officer or official of BPCA.

11. The Proposer hereby certifies that they are not on the "Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012" list ("Prohibited Entities List") posted on the New York State Office of General Services website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certify that they will not utilize any sub consultant that is identified on the Prohibited Entities List in connection with the Consulting Engineer Services Agreement.

12. New York State businesses [WILL BE USED/WILL NOT BE USED] [**PLEASE SELECT ONE**] in the performance of the Consulting Engineer Services Agreement.

New York State businesses to be used, if any, are:

Name of Proposer

Name and Title of Designated Signatory

Signature

Date

ATTACHMENT C
DRAFT CONSULTING ENGINEER SERVICES AGREEMENT

ATTACHMENT C
DRAFT CONSULTING ENGINEER SERVICES AGREEMENT

[See attached.]

CONSULTING ENGINEER SERVICES AGREEMENT
FOR BATTERY PARK CITY FLOOD RESILIENCY PROJECTS

between

BATTERY PARK CITY AUTHORITY

and

[CONSULTING ENGINEER]

Dated as of

[____], 2020

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APPENDIX 7.	FORM OF CONTRACT ADMINISTRATION MEMORANDUM

THIS CONSULTING ENGINEER SERVICES AGREEMENT (this “**Agreement**”) is made and entered into as of [_____] (the “**Commencement Date**”), between the Battery Park City Authority, d/b/a Hugh L. Carey Battery Park City Authority (“**BPCA**”), a body corporate and politic, constituting a public benefit corporation of the State of New York and having a place of business at 200 Liberty Street, 24th Floor, New York, New York 10281, and [_____] a [_____] organized and existing under the laws of the State of [_____] and authorized to do business in the State of New York, with a place of business at [_____] (the “**Consulting Engineer**”).

RECITALS

WHEREAS, BPCA has fee title to certain real property located in the City, County and State of New York, generally known as Battery Park City;

WHEREAS, BPCA has developed Battery Park City, in individual parcels, with the goal of creating a richly diversified mixed use community providing residential and commercial space with related amenities such as parks, plazas, recreational areas and a waterfront esplanade;

WHEREAS, BPCA has been assessing and undertaking efforts to address the threats of damage and injury to Battery Park City and its residents as a result of future severe storm activity, storm surge and sea level rise associated with global climate change;

WHEREAS, BPCA has determined to undertake certain urban flood resiliency capital improvements in Battery Park City;

WHEREAS, pursuant to a competitive procurement process, BPCA determined that the Consulting Engineer would provide the best value to BPCA in providing certain multidisciplinary design, engineering, permitting, procurement management, contract administration, consulting and related services in connection with BPCA’s planned resiliency projects, as more particularly described herein; and

WHEREAS, BPCA desires to retain the Consulting Engineer to provide the professional services described herein, and the Consulting Engineer desires to provide the professional services described herein under the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS. For the purposes of this Agreement, the following words and terms shall have the respective meanings set forth in this Section.

“Additional Services” means those services described in subsection 3.2(A) (CE Services Scope Changes).

“Agreement” means this Consulting Engineer Services Agreement between BPCA and the Consulting Engineer, including the Appendices, as the same may be amended or modified from time to time in accordance herewith.

“Appendix” means any of the appendices and, as applicable, any attachments thereto, that are appended to this Agreement and identified as such in the table of contents hereto.

“Applicable Law” means (1) any federal, State or local law, code, regulation; (2) any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule, or other order of any Governmental Body having appropriate jurisdiction; (3) any established interpretation of law or regulation utilized by an appropriate Governmental Body if such interpretation is documented by such Governmental Body and generally applicable; and (4) any Governmental Approval, in each case having the force of law and applicable from time to time to the Resiliency Projects or any transaction contemplated hereby.

“Base Services” means all services, other than Additional Services, required to be performed by the Consulting Engineer under this Agreement, as more particularly described in Appendix 1 (Scope of Base Services).

“BPCA” has the meaning set forth in the preamble hereto.

“BPCA Indemnatee” has the meaning set forth in subsection 6.2(A) (Indemnification by the Consulting Engineer).

“BPCPC” means the Battery Park City Parks Conservancy Corporation.

“CE Services Director” has the meaning specified in subsection 3.6(A) (Consulting Engineer’s CE Services Director).

“CE Services” means the Base Services and any approved Additional Services.

“Commencement Date” has the meaning set forth in the preamble hereto.

“Consulting Engineer” has the meaning set forth in the preamble hereto.

“Contract Administration Memorandum” has the meaning set forth in subsection 7.3(B) (Contract Administration Memoranda).

“Deliverable Material” means all documents, reports, studies, surveys, computer programs, warranties, manuals, submittals, licenses and other documents and materials, in any form or format, developed by or on behalf of the Consulting Engineer in the performance of the CE Services.

“Design-Builder” means the design-build entity that enters into the PDB Contract with BPCA, including the contracting entity, its subcontractors and all associated personnel.

“Design-Build Work” means the work and services to be performed and provided by the Design-Builder pursuant to the PDB Contract.

“Fees and Costs” means fees and expenses of employees, attorneys, architects, engineers, expert witnesses, contractors, consultants and other persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses incurred in connection with investigating, preparing for, defending or otherwise responding to any Legal Proceeding.

“Governmental Approvals” means all orders of approval, permits, licenses, authorizations, consents, certifications, exemptions, rulings, entitlements and approvals issued by a Governmental Body of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Resiliency Projects.

“Governmental Body” means any federal, State, regional or local legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any official thereof having jurisdiction.

“Key Personnel” has the meaning specified in subsection 3.6(B) (Key Personnel).

“Legal Proceeding” means every claim, action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding related to this Agreement or the performances of the parties hereunder, and all appeals therefrom.

“Loss-and-Expense” means, and is limited to, any and all loss, demand, liability, forfeiture, obligation, damage, settlement payment, fine, penalty, judgment, deposit, charge, tax, cost or expense relating to third-party claims, including all Fees and Costs.

“Monthly Report” has the meaning specified in subsection 3.9(B) (Monthly Reports).

“Non-Binding Mediation” means the voluntary system of dispute resolution through third-party mediation established by Section 5.3 (Dispute Resolution Procedures) for the resolution of any dispute arising under this Agreement.

“Not-to-Exceed Amount” has the meaning set forth in Section 4.1 (Compensation for Base Services).

“Notice to Proceed” means a written notice, which is identified as a “notice to proceed” and issued by BPCA, authorizing the Consulting Engineer to commence performing a portion of the CE Services, as specified in the applicable Notice to Proceed.

“PDB Contract” means the progressive design-build contract for the PDB Project to be entered into by BPCA and the Design-Builder.

“PDB Project” means the Resiliency Project to be undertaken by BPCA on a progressive design-build basis in accordance with the New York Infrastructure Investment Act, as established in Part F of Chapter 60 of the 2015 Laws of New York as amended from time to

time, to provide for the design and construction of both the North Battery Park City Resiliency Project and the West Battery Park City Resiliency Project.

“Prompt Payment Policy” means BPCA’s prompt payment policy adopted pursuant to Section 2880 of the Public Authorities Law, as in effect on the Commencement Date, requiring each public benefit corporation to promulgate rules and regulations detailing its policy with respect to making prompt payment to contractors.

“Required Insurance” has the meaning specified in Appendix 5 (Required Insurance).

“Resiliency Projects” means all urban flood resiliency projects to be undertaken by BPCA over the Term, including the PDB Project, the South Battery Park City Resiliency Project and the Battery Park City Ballfield & Community Center Resiliency Project.

“Standard of Care” has the meaning specified in Section 3.4 (Standard of Care).

“State” means the State of New York.

“Subconsultant Agreement” means any contract entered into by the Consulting Engineer with one or more persons in connection with the performance of the CE Services, whether for the furnishing of labor, materials, equipment, supplies, services or otherwise.

“Subconsultant” means any person that enters into a Subconsultant Agreement with the Consulting Engineer.

“Term” has the meaning set forth in Section 2.1 (Commencement Date and Term).

SECTION 1.2. INTERPRETATION. In this Agreement, unless the context otherwise requires:

(A) Plurality. Words importing the singular number mean and include the plural number and vice versa.

(B) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Agreement shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(C) References to Including. The words “include,” “includes” and “including” are to be construed as meaning “include without limitation,” “includes without limitation” and “including without limitation,” respectively.

(D) References to Documents and Standards. Each reference to an agreement, document, standard, principle or other instrument includes a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned.

(E) Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the transactions contemplated herein. Without limiting the generality of the foregoing, this Agreement shall completely and fully supersede all other understandings and agreements among the parties with respect to such transactions, including any proposal previously submitted by the Consulting Engineer.

(F) Counterparts and Delivery by Electronic Mail. This Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Agreement. Electronic delivery of an executed counterpart of a signature page of this Agreement or any document or instrument delivered in connection herewith in accordance with Section 7.10 (Notices) shall be effective as delivery of any original executed counterpart of this Agreement or such other document or instrument, as applicable.

(G) Governing Law and Venue. This Agreement shall be construed under, and be governed by, the laws of the State. All actions or proceedings relating, directly or indirectly, to this Agreement shall be litigated only in courts located within the County of New York. The Consulting Engineer and its successors and assigns hereby subject themselves to the jurisdiction of any state or federal court located within such county, waive the personal service of any process upon them in any action or proceeding therein and consent that such process be served by certified or registered mail, return receipt requested, directed to the Consulting Engineer and any successor at Consulting Engineer's address hereinabove set forth and to any assignee at the address set forth in the instrument of assignment. Such service shall be deemed made two days after such process is so mailed.

(H) Provisions Required by Law. Each and every provision of law and clause required by law to be included in this Agreement shall be deemed to be included herein, and this Agreement shall read and shall be enforced as though such provisions or clauses were so included.

(I) Severability. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is held to be invalid, unenforceable or illegal to any extent, such provision shall be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement, unless such continued effectiveness as modified would be contrary to the basic understandings and intentions of the parties as expressed herein. If any provision of this Agreement is held to be invalid, unenforceable or illegal, the parties will promptly endeavor in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as nearly as possible to its original intent and effect.

(J) Drafting Responsibility. The parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement to the effect that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed Agreement or any earlier draft of the same.

(K) Third-Party Rights. This Agreement is exclusively for the benefit of BPCA and the Consulting Engineer and shall not provide any third parties (with the sole exception of the rights of any third-party BPCA Indemnatee to the extent provided in Section 6.2 (Indemnification) and Appendix 5 (Required Insurance)) with any remedy, claim, liability, reimbursement, cause of action or other rights.

(L) BPCA Discretion. Unless otherwise expressly stated herein, BPCA may exercise all of its rights hereunder in its sole and absolute discretion.

ARTICLE 2

TERM

SECTION 2.1. COMMENCEMENT DATE AND TERM. This Agreement shall become effective on the Commencement Date, and the time for performance of the CE Services shall continue until October [], 2025, unless this Agreement is sooner terminated as set forth herein or the time for performance is extended by the mutual written agreement of the parties hereto (the “**Term**”). The Consulting Engineer shall perform and complete the authorized CE Services within the Term in accordance with this Agreement.

SECTION 2.2. SURVIVAL OF CERTAIN PROVISIONS UPON TERMINATION.

Notwithstanding any other provision of this Agreement, the following provisions hereof shall survive the expiration or earlier termination of this Agreement:

- (1) Section 6.1 (Insurance) and Appendix 5 (Required Insurance);
- (2) Section 6.2 (Indemnification);
- (3) Section 7.1 (Ownership and Use of Deliverable Material);
- (4) Section 7.9 (Retention and Audit of Books and Records);
- (5) all other provisions of this Agreement that so provide shall survive the expiration or earlier termination of this Agreement; and
- (6) any provision of this Agreement whose purpose would be defeated or rendered meaningless by the expiration or earlier termination hereof.

No termination or expiration of this Agreement shall (a) limit or otherwise affect the respective rights and obligations of the parties hereto accrued prior to the date of such termination or expiration; or (b) preclude BPCA from impleading the Consulting Engineer in any Legal Proceeding originated by a third party as to any matter occurring during the Term.

ARTICLE 3

PERFORMANCE OF THE CE SERVICES

SECTION 3.1. SCOPE OF CE SERVICES.

(A) Generally. The Consulting Engineer shall render and perform the Base Services for BPCA in accordance with Appendix 1 (Scope of Base Services) and the terms and conditions of this Agreement. The Consulting Engineer shall further render and perform any agreed to Additional Services in accordance with the terms and conditions of this Agreement. The Consulting Engineer's responsibility to perform the CE Services shall include the employment of or, subject to the limitations set forth herein, the subcontracting for all necessary professionals, technicians, architects and engineers, properly qualified, licensed and skilled in the various aspects of the CE Services, and the performance of all services reasonably inferable from the CE Services. Subject to Section 3.10 (Limitations on Consulting Engineer Responsibilities), the Consulting Engineer shall manage all employees, agents and Subconsultants, and perform all authorized CE Services in accordance with the Standard of Care such that the Resiliency Projects can be safely and successfully completed within the established schedule and budget.

(B) Commencement of CE Services Tasks; Notices to Proceed. As of the Commencement Date, the Consulting Engineer is authorized to perform the Base Services described in Task 0 (General Program Management) and Task 1 (Initial Start-Up Activities) of Appendix 1 (Scope of Base Services). The Consulting Engineer shall not proceed with any other CE Services prior to receipt of a Notice to Proceed authorizing the performance of such CE Services. At the request of BPCA, the Consulting Engineer shall meet with BPCA prior to issuance of any such Notice to Proceed to discuss whether, based on the CE Services performed to date and the decisions made by BPCA regarding the PDB Project, any reduction to the originally anticipated scope of work for such CE Services would be appropriate. If the original scope of work for any task set forth in Appendix 1 (Scope of Base Services) is reduced, an appropriate reduction to the overall Not-to-Exceed Amount and the not-to-exceed amount associated with such task in Appendix 2 (Compensation) shall be negotiated by the parties and set forth in an amendment to this Agreement. Except as may be agreed to by BPCA in its discretion and specifically set forth in the applicable Notice to Proceed, the Consulting Engineer shall not be entitled to any compensation or reimbursement for any costs incurred for the performance of CE Services (excluding the Base Services authorized as of the Commencement Date) prior to the issuance of a Notice to Proceed authorizing such performance in accordance with this Section.

SECTION 3.2. CHANGES TO THE SCOPE OF CE SERVICES.

(A) CE Services Scope Changes. BPCA shall have the right to direct additions, reductions and other changes to the scope of the CE Services at any time and for any reason, in its discretion, by written notice to the Consulting Engineer. Any expansion of the scope of the CE Services shall constitute "**Additional Services**". Unless otherwise specified by BPCA in its written notice, changes to the scope of the CE Services shall be effective upon the delivery of the written notice by BPCA. Without limiting any other provision of this Section 3.2, in no event will the Consulting Engineer be entitled to additional compensation for Additional Services, unless, prior to the performance of such Additional Services, the Consulting Engineer has received written notice from BPCA directing the performance of such Additional Services.

(B) Compensation for Additional Services. If the Consulting Engineer believes that any work it has been directed to perform by BPCA pursuant to subsection (A) (CE Services Scope Changes) of this Section constitutes Additional Services, the Consulting Engineer shall promptly (within 10 business days) notify BPCA in writing. If BPCA agrees that any such work

constitutes Additional Services, the parties shall promptly negotiate reasonable and equitable additional compensation, including an appropriate not-to-exceed amount, for the subject Additional Services, subject to Section 4.2 (Compensation for Additional Services). Any change in the Consulting Engineer's compensation for the performance of Additional Services, including the maximum compensation that may be payable to the Consulting Engineer for such Additional Services, shall be mutually agreed to and reflected in a written amendment to this Agreement. In the event that the parties are unable to agree as to whether work directed by BPCA constitutes Additional Services, or on the amount to be paid to the Consulting Engineer for any Additional Services, the parties may proceed in accordance with Section 5.3 (Dispute Resolution Procedures).

(C) Exclusions from Additional Services. Additional Services shall not include work or services necessary because of the Consulting Engineer's: (1) errors, deficiencies or omissions in performance of the CE Services hereunder; or (2) failure to perform, or failure to cause Subconsultants to perform, the Consulting Engineer's obligations hereunder in accordance with the Standard of Care. The Consulting Engineer shall, without additional compensation from BPCA, correct or revise any errors, deficiencies or omissions in its Deliverable Material and take such other action as may be necessary to remedy any failure to perform the CE Services in accordance with the requirements of this Agreement.

SECTION 3.3. ADDITIONAL CONSULTING ENGINEER RESPONSIBILITIES AND REQUIREMENTS.

(A) Generally. The Consulting Engineer shall:

- (1) be responsible for the professional quality, technical accuracy, and coordination of all CE Services in accordance with the Standard of Care;
- (2) provide sufficient organization, personnel and management to perform the CE Services in an expeditious and economical manner consistent with the interests of BPCA and the Standard of Care; and
- (3) furnish all labor, services, supplies, material and equipment required to perform the CE Services using its professional efforts, skill, judgment and abilities in accordance with this Agreement.

(B) Reliance. The Consulting Engineer acknowledges and agrees that BPCA is entering into this Agreement in reliance on the Consulting Engineer's expertise with respect to the CE Services. The Consulting Engineer shall furnish the professional skill and judgment necessary to fulfill its duties under this Agreement and maintain the Standard of Care. The Consulting Engineer represents to BPCA that the Consulting Engineer understands the complexity involved in the Resiliency Projects and has the ability to meet the standards of performance required by this Agreement. The Consulting Engineer accepts the professional services obligations to BPCA provided for by this Agreement.

(C) Responsibility for Employees, Agents and Subconsultants. All obligations of the Consulting Engineer under this Agreement shall be performed in compliance with the Standard of Care by employees, agents or Subconsultants (subject to the limitations set forth in Section 3.7 (Subconsultants)) of the Consulting Engineer who are experienced and skilled in their business or profession and in accordance with the standards of their business or profession and the requirements of this Agreement. The Consulting Engineer shall be fully responsible to BPCA for the performance of all work under this Agreement, including all CE Services performed by its employees, agents or Subconsultants.

(D) Consulting Engineer Cooperation. The Consulting Engineer shall:

(1) perform, and shall cause its employees, agents and Subconsultants to perform, the CE Services in cooperation with BPCA, the Design-Builder, each other separate consultant or contractor performing work on behalf of BPCA in respect of the Resiliency Projects, and each of their respective consultants, contractors, subcontractors, suppliers, materialmen and personnel performing services or providing supplies, equipment and materials in connection with the Resiliency Projects, so that all are performed in a harmonious manner;

(2) work with such firms or individuals as BPCA may designate from time to time in connection with the CE Services, and agrees to meet with such firms or individuals at such times as BPCA may require in order to maintain an ongoing review process so as to expedite determinations and approvals required to be made in connection with the CE Services; and

(3) render any assistance that BPCA may require with respect to any claim or action arising from or in any way relating to the CE Services during or subsequent to the Term, including review of claims, preparation of technical reports and participation in negotiations, both before and after the Consulting Engineer has completed performance of the CE Services and without any additional compensation therefor.

(E) Time for Performance. Time is of the essence with respect to the Consulting Engineer's performance of the CE Services. The Consulting Engineer shall perform, and cause to be performed, the CE Services as expeditiously as is consistent with the Standard of Care, as well as the orderly progress of the Design-Build Work, and at the time or times required by BPCA.

(F) Consulting Engineer's Limited Authority with Respect to the PDB Contract. The Consulting Engineer shall, to the extent described herein and as directed by BPCA, assume and perform the duties of a representative of BPCA as will be set forth in the PDB Contract. Notwithstanding the foregoing, the Consulting Engineer shall not: (1) have authority to enter into any amendments, change orders, or other binding arrangements on behalf of BPCA in connection with the PDB Contract; or (2) except as may be expressly authorized in writing by BPCA from time to time, take any action that, under such PDB Contract, may result in (a) the granting of additional compensation or time for performance, (b) a modification to the quality of the Design-Build Work, or (c) a change in the health, safety, security or any other requirements of the PDB Contract.

(G) Completeness and Accuracy of Deliverable Material. Notwithstanding anything in this Agreement to the contrary, the Consulting Engineer shall be fully responsible for the completeness and accuracy of all Deliverable Material. In no event shall BPCA be responsible for discovering deficiencies in any Deliverable Material. Any Deliverable Material developed pursuant to this Agreement may be relied upon by BPCA for purposes of the Resiliency Projects, including any studies and reports relating to geotechnical conditions, hazardous materials and similar matters.

(H) Notices of Potential PDB Contract Claims. The Consulting Engineer shall promptly give notice to BPCA upon becoming aware of the following: (1) any act, omission, event or occurrence that might reasonably be anticipated to result in the allegation of a claim, lien or other demand against the Consulting Engineer, BPCA, the Design-Builder or any of their respective representatives, consultants, contractors, subcontractors or suppliers; and (2) any claim, demand or request asserted, filed or made, or that the Consulting Engineer anticipates

may be asserted, filed or made, for extensions of time or for additional compensation with respect to the Design-Build Work.

SECTION 3.4. STANDARD OF CARE.

(A) Standard of Care. The Consulting Engineer shall perform its duties under this Agreement in conformance with Applicable Law and the care, skill, quality and diligence others in the profession ordinarily exercise in like circumstances (the “**Standard of Care**”). Nothing to the contrary herein shall erode the Standard of Care, including any requirement that the Consulting Engineer use its best efforts to comply with any provisions in this Agreement.

(B) Failure to Perform in Accordance with the Standard of Care. Without limiting anything under Section 6.2 (Indemnification), the Consulting Engineer shall be responsible for all direct damages incurred by BPCA as a result of the failure of the Consulting Engineer to properly perform, or cause to be performed by its employees, agents and Subconsultants, its obligations under this Agreement in accordance with the Standard of Care. The Consulting Engineer shall not be entitled to any compensation for CE Services not performed in accordance with the Standard of Care.

SECTION 3.5. COMPLIANCE WITH APPLICABLE LAW.

The Consulting Engineer shall perform the CE Services in compliance with all requirements of Applicable Law, and shall cause its employees, agents and Subconsultants to comply with Applicable Law in the performance of the CE Services. Without limiting the generality of the foregoing, the Consulting Engineer shall ensure that all persons performing CE Services, including all employees, agents and Subconsultants, comply with all registration, licensing and certification requirements imposed by Applicable Law and any Governmental Body. The Consulting Engineer shall bear all risk associated with any non-compliance with Applicable Law and shall, at its own expense, indemnify, defend and hold harmless the BPCA Indemnitees, as and to the extent provided in Section 6.2 (Indemnification), from claims, judgments and liabilities, which may be incurred as a result of the Consulting Engineer’s non-compliance with Applicable Law.

SECTION 3.6. CONSULTING ENGINEER PERSONNEL

(A) Consulting Engineer’s CE Services Director. The Consulting Engineer shall designate an individual who shall serve as the Consulting Engineer’s principal representative and have primary responsibility for the overall performance by the Consulting Engineer of its obligations under this Agreement (the “**CE Services Director**”). The initial CE Services Director is identified in Appendix 4 (Key Personnel and Approved Subconsultants; Staffing Plan). The CE Services Director shall attend all meetings concerning the performance of the CE Services, including scope meetings, review meetings, design meetings, pre-bid meetings, pre-construction meetings and construction meetings with BPCA’s staff, consultants and contractors (including the Design-Builder and its respective consultants and contractors), and shall be responsible for providing executive and management expertise and oversight with respect to the performance of the CE Services. The CE Services Director shall be considered Key Personnel subject to the terms and conditions of this Section.

(B) Key Personnel. The Consulting Engineer acknowledges that the identity of the key management and supervisory personnel, including the CE Services Director (the “**Key Personnel**”), identified by the Consulting Engineer prior to the Commencement Date was a material factor in the selection of the Consulting Engineer to perform the CE Services. Such Key Personnel, their affiliations and anticipated roles in the performance of the CE Services are set

forth in Appendix 4 (Key Personnel and Approved Subconsultants; Staffing Plan). The Consulting Engineer shall utilize such Key Personnel to perform the services indicated in Appendix 4 (Key Personnel and Approved Subconsultants; Staffing Plan) unless such Key Personnel are unavailable for good cause shown. “Good cause shown” shall not include performing services on other projects for the Consulting Engineer or any of its affiliates or Subconsultants, but shall include removal at the request of BPCA and termination for cause, employee death, disability, retirement, resignation or any job protected leave available under Applicable Law. In the event of any such permissible unavailability, the Consulting Engineer shall utilize replacement key management and supervisory personnel of equivalent skill, experience and reputation. Any Key Personnel change shall: (1) be proposed to BPCA for its review, consideration and determination of compliance with this subsection with reasonable advance notice; and (2) be subject to the written approval of BPCA, which shall not be unreasonably withheld in the case of permissible unavailability and, in all other cases, shall be in BPCA’s discretion. Failure to comply with these requirements in respect of Key Personnel will be considered a material breach of this Agreement. The Consulting Engineer shall replace any individual performing the CE Services, including any Key Personnel, at the request of BPCA, after notice and a reasonable opportunity for corrective action, in the event that BPCA determines in its discretion that an unworkable relationship has developed between BPCA and the individual.

SECTION 3.7. SUBCONSULTANTS.

(A) Generally. Subject to the restrictions set forth in this Section, the Consulting Engineer may use Subconsultants approved in advance in writing by BPCA for the performance of the CE Services. The Consulting Engineer shall be fully responsible to BPCA for the performance of all work under this Agreement performed by any Subconsultant.

(B) Approval Required. The Subconsultants identified in Appendix 4 (Key Personnel and Approved Subconsultants; Staffing Plan) are approved by BPCA for the performance of the specific services identified in Appendix 4 (Key Personnel and Approved Subconsultants; Staffing Plan). The Consulting Engineer shall retain such Subconsultants to perform such identified services. All other Subconsultants shall be subject to the advance written approval of BPCA, which approval shall not be unreasonably withheld.

SECTION 3.8. DIVERSITY AND EMPLOYMENT REQUIREMENTS.

The Consulting Engineer acknowledges the importance to BPCA of using qualified and diverse employees and Subconsultants located in the greater New York City area to assist in performing the CE Services and agrees comply with all requirements set forth in Appendix 6 (Diversity and Employment Requirements).

SECTION 3.9. COORDINATION WITH BPCA.

(A) Meetings and Reports Generally. The Consulting Engineer shall hold periodic meetings and conferences with BPCA, as specified in Appendix 1 (Scope of Base Services), to update BPCA on the progress of the CE Services. The Consulting Engineer shall keep BPCA regularly informed as to the progress of the CE Services through the submittal of periodic reports in accordance with the requirements set forth in this Section and Appendix 1 (Scope of Base Services).

(B) Monthly Reports. The Consulting Engineer shall provide BPCA with monthly written reports (each, a “**Monthly Report**”) in a format acceptable to BPCA, covering the aspects of the Resiliency Projects relating to the CE Services and all other information required to be supplied on a monthly basis in Appendix 1 (Scope of Base Services). BPCA’s

receipt or acceptance of the Monthly Report (or any revised Monthly Report) shall not bind BPCA in any manner. Thus, BPCA's receipt or acceptance of the Monthly Report (or any revised Monthly Report) shall not imply BPCA approval or consent to any of the matters set forth therein and shall not limit or otherwise affect the Consulting Engineer's obligations with respect to this Agreement and the CE Services.

(C) Information Provided by BPCA. BPCA shall, at the reasonable request of the Consulting Engineer, make available for the Consulting Engineer's use in connection with the performance of the CE Services all existing information relative to existing facilities and the design and construction of the Resiliency Projects that is in the possession or control of BPCA and to the extent the preparer of the information permits. Any and all information provided by BPCA shall remain the property of BPCA or the preparer, as applicable, and shall be returned to BPCA or the preparer upon written demand by BPCA to the Consulting Engineer. The Consulting Engineer shall review the provided information and advise BPCA as to whether further examination, validation, supplementation or updating is recommended; and shall inform BPCA if it reasonably believes or suspects that any information is inaccurate. The Consulting Engineer shall not be responsible for the completeness or accuracy of any documents or information that are not prepared by or on behalf of the Consulting Engineer, except to the extent that BPCA requests the Consulting Engineer to perform work to update or validate any such documents or information. The Consulting Engineer shall handle all information provided by BPCA in a confidential manner, as further described in Section 7.7 (Confidentiality).

(D) BPCA Representative. BPCA shall designate in writing an employee of BPCA assigned to administer this Agreement and act as BPCA's representative to the Consulting Engineer in connection with the CE Services. BPCA may from time to time notify the Consulting Engineer in writing of changes to the person assigned as the representative hereunder. Any such representative shall have the authority to transmit instructions, receive information and interpret and define BPCA's policies and decisions with respect to the performance of the CE Services.

SECTION 3.10. LIMITATIONS ON CONSULTING ENGINEER RESPONSIBILITIES.

BPCA recognizes that the Consulting Engineer will not have control over, charge of, or responsibility for the Design-Build Work or the means, methods, techniques, sequences or procedures, or safety precautions and programs employed by the Design-Builder in connection with the Design-Build Work. Without limiting the Consulting Engineer's monitoring and reporting obligations hereunder, the Consulting Engineer shall not be responsible for the Design-Builder's failure to perform the Design-Build Work in accordance with the PDB Contract.

ARTICLE 4

COMPENSATION

SECTION 4.1. COMPENSATION FOR BASE SERVICES.

Payments by BPCA to the Consulting Engineer hereunder shall be based on the time and reimbursable expenses reasonably incurred by the Consulting Engineer in the performance of the CE Services, in the manner and subject to the terms and conditions set forth in this Agreement, including the hourly rates and all other compensation terms and conditions set forth in Appendix 2 (Compensation) and Appendix 3 (Schedule of Fees and Charges). BPCA's compensation to the Consulting Engineer, including any reimbursable expenses described in subsection 4.3(F) (Reimbursable Expenses) shall not exceed a total not-to-exceed amount equal to \$[] (the "**Not-to-Exceed Amount**"), and the Consulting Engineer agrees to accept such amount as full compensation for the performance of all Base Services. The Consulting Engineer shall not be entitled to compensation for the Base Services in excess of the Not-to-Exceed Amount under any circumstance. In no event shall the Not-to-Exceed Amount be construed to entitle the Consulting Engineer to such amount as minimum compensation for performance of the Base Services hereunder. BPCA may reallocate the amounts between any tasks and subtasks set forth in Appendix 2 (Compensation) at any time in its discretion

SECTION 4.2. COMPENSATION FOR ADDITIONAL SERVICES.

The Consulting Engineer shall be compensated for any Additional Services on a time and reimbursable expense basis (subject to a not-to-exceed amount), as agreed to in writing through an amendment to this Agreement in accordance with Section 3.2 (Changes to the Scope of the CE Services). Hourly rates and reimbursable expenses payable for Additional Services shall not exceed comparable hourly rates and reimbursable expenses set forth in Appendix 3 (Schedule of Fees and Charges).

SECTION 4.3. GENERAL COMPENSATION PROVISIONS.

(A) Invoices and Payment. The Consulting Engineer shall provide BPCA with an invoice for the performance of the CE Services on a monthly basis in a format acceptable to BPCA. BPCA shall pay such invoice in a reasonable time, not to exceed 30 days (excluding holidays) following BPCA's receipt of a Proper Invoice (pursuant to, and as such term is defined in the Prompt Payment Policy). The Consulting Engineer shall proceed promptly with all authorized CE Services, and shall have no right to suspend all or any part of the CE Services regardless of the existence of any claim, dispute or failure of BPCA to approve or timely pay amounts requisitioned by the Consulting Engineer in accordance with this Agreement. The Consulting Engineer's sole remedy for the failure of BPCA to make any payment on its due date in accordance with this Agreement is the payment of interest by BPCA in accordance with the Prompt Payment Policy.

(B) Delivery of Invoices. All requests for payment should be addressed as follows:

Office of the Treasurer
Battery Park City Authority
d/b/a Hugh L. Carey Battery Park City Authority
200 Liberty Street, 24th Floor
New York, NY 10281-1097
Attn.: Accounts Payable

A duplicate copy is to be sent to the attention of [Project Manager, Title, Address].

(C) Disputed Amounts. BPCA may dispute any payment, deposit or reimbursable expense, and deduct from future payment requests the amount in dispute until such time as the dispute is resolved in accordance with this Agreement. In accordance with and subject to the Prompt Payment Policy, the BPCA shall endeavor to raise any dispute within 15 days of the receipt of an invoice.

(D) Withheld Payments. BPCA may, subject to the Prompt Payment Policy, withhold all or an appropriate portion of any payment for any of the following reasons: (1) a lien or other claim made, asserted, or filed regarding the CE Services for payments made to the Consulting Engineer; (2) failure of the Consulting Engineer to properly make a payment to a Subconsultant when due pursuant to a Subconsultant Agreement; (3) deviation by the Consulting Engineer from performance of the CE Services in accordance with the Standard of Care; (4) reimbursements are owed to BPCA in accordance with the terms and conditions of this Agreement; (5) material breach of this Agreement by the Consulting Engineer; or (6) any other disputed amount. Subject to subsection (E) (Non-Compliant Services) of this Section, should BPCA dispute in good faith any portion of an invoice, BPCA shall pay the undisputed portion as provided herein. Once the condition justifying withholding payment has been removed, the amount withheld by BPCA shall be released with payment of the following invoice.

(E) Non-Compliant Services. Nothing contained in this Agreement shall require BPCA to pay for any unsatisfactory or duplicative work or for work that is not in compliance with the terms and conditions of this Agreement.

(F) Reimbursable Expenses. Payments of costs and expenses identified as reimbursable expenses in Appendix 3 (Schedule of Fees and Charges) are reimbursable to the Consulting Engineer to the extent such costs are: (i) necessarily and reasonably incurred by the Consulting Engineer in the reasonable opinion of BPCA, (ii) actually paid by the Consulting Engineer or its Subconsultants in the performance of authorized CE Services, (iii) supported by receipts or other written evidence acceptable to BPCA in its discretion; (iv) not expenses described in subsection (G) (Nonreimbursable Expenses) of this Section; and (v) consistent with the Not-to-Exceed Amount. All reimbursable expenses shall be at the actual expense incurred by the Consulting Engineer and its Subconsultants, without markup. Nothing in this subsection shall be construed as entitling the Consulting Engineer to any compensation or reimbursement in excess of the Not-to-Exceed Amount.

(G) Nonreimbursable Expenses. The Consulting Engineer acknowledges and agrees that the hourly rates set forth in Appendix 3 (Schedule of Fees and Charges) are “fully loaded” rates inclusive of any expected profit as well as any salary costs, fringe benefits, payroll taxes, and general and administrative expenses (including insurance) payable by the Consulting Engineer in performing the CE Services. Accordingly, such profit and expenses shall not be separately reimbursable by BPCA to the Consulting Engineer. Additionally, travel expenses are not reimbursable unless approved in advance by BPCA.

ARTICLE 5

TERMINATION AND DISPUTE RESOLUTION

SECTION 5.1. BPCA SUSPENSION AND TERMINATION RIGHTS.

(A) BPCA Suspension. BPCA may, at any time and for any reason, order the Consulting Engineer in writing to suspend, delay or interrupt performance of all or any part of the CE Services for a reasonable period of time as BPCA may determine. Upon receipt of a suspension order, the Consulting Engineer shall, as soon as practicable, cease performance of the CE Services as ordered and take immediate affirmative measures to protect such CE Services from loss or damage. The Consulting Engineer specifically agrees that such suspension, delay or interruption of the performance of the CE Services pursuant to this subsection shall not increase the cost of performance of the CE Services. BPCA may extend the Term to compensate the Consulting Engineer for lost time due to suspension, delay or interruption, and such time extension shall be the Consulting Engineer's sole compensation for the same. The Consulting Engineer shall resume performance of such CE Services upon the date ordered by BPCA.

(B) Termination for Convenience. BPCA, at any time, may terminate this Agreement in whole or in part. Any such termination shall be effected by delivering to the Consulting Engineer a written notice of termination specifying the extent to which performance of the CE Services under this Agreement are terminated and the date upon which such termination becomes effective. Upon receipt of the notice of termination, the Consulting Engineer shall act promptly to minimize any expenses resulting from such termination. BPCA shall pay the Consulting Engineer for the CE Services actually and satisfactorily performed up to the effective date of the termination plus reasonable demobilization costs actually incurred by the Consulting Engineer as a result of the termination, but in no event shall the Consulting Engineer be entitled to compensation in excess of the Not-to-Exceed Amount. In the event of such a termination, BPCA may take over the CE Services and prosecute same to completion by contract or otherwise, and may take possession of and utilize all Deliverable Material to complete the CE Services. Except as otherwise provided herein, all of BPCA's liability hereunder shall cease and terminate as of the effective date specified in such notice of termination.

(C) Termination for Cause. BPCA may terminate this Agreement for cause, by serving written notice upon the Consulting Engineer of BPCA's intention to terminate this Agreement, if:

(1) the Consulting Engineer shall fail to diligently, timely and expeditiously perform any of its obligations as set forth in this Agreement;

(2) any representation or warranty made or deemed to have been made under this Agreement by the Consulting Engineer shall prove to be untrue in any material respect;

(3) the Consulting Engineer shall make a general assignment for the benefit of its creditors, or a receiver or trustee shall have been appointed on account of the Consulting Engineer's insolvency, or the Consulting Engineer otherwise shall be or become insolvent, or an order for relief shall have been entered against the Consulting Engineer under Chapter 7 or Chapter 11 of Title 11 of the United States Code;

(4) a breach of any covenant or agreement contained in Section 7.11 (Consulting Engineer Covenants, Representations and Warranties) of this Agreement or any other section of this Agreement shall occur; or

(5) the Consulting Engineer otherwise shall be in default hereunder.

Such BPCA written notice shall state: (i) the reasons for BPCA's intention to terminate this Agreement, and (ii) the effective date of termination, to be not less than three days after the date of the notice of termination. If the Consulting Engineer shall fail to cure the reasons for termination or make arrangements satisfactory to BPCA on or before the effective date of termination, this Agreement shall terminate on the date specified by BPCA in the notice of termination. In the event of any such termination, BPCA may take over the CE Services (including by taking possession of and utilizing all Deliverable Material) and prosecute same to completion by contract or otherwise, and the Consulting Engineer shall be liable to BPCA for all costs incurred by BPCA by reason of said termination, including all additional costs and expenses that BPCA may incur in providing for the completion of the CE Services over those which BPCA would have incurred in connection with the CE Services if BPCA had not so terminated this Agreement for cause. Nothing contained in this Agreement shall limit in any manner any and all rights or remedies otherwise available to BPCA by reason of a default by the Consulting Engineer under this Agreement, including, without limitation, the right to seek full reimbursement from the Consulting Engineer for all costs and expenses incurred by BPCA by reasons of the Consulting Engineer's default hereunder and which BPCA would not have otherwise incurred if the Consulting Engineer had not defaulted hereunder.

(D) Consulting Engineer Actions Upon Termination. Upon any termination of this Agreement in accordance with the provisions of this Section 5.1 (BPCA Suspension and Termination Rights), the Consulting Engineer shall, with respect to the CE Services which are the subject of such termination:

- (1) discontinue all its services from and after the date of the notice of termination, except to attempt to cure any reasons for termination for cause prior to the effective date of any such termination or as may be required to complete any item or portion or services to a point where discontinuance will not cause unnecessary waste of duplicative work or cost;
- (2) cancel, or if so directed by BPCA, transfer to BPCA all commitments and agreements made by the Consulting Engineer relating to the CE Services, to the extent same are cancelable or transferable by the Consulting Engineer;
- (3) transfer to BPCA in the manner, to the extent, and at the time directed by BPCA, all Deliverable Material produced as a part of, or acquired in the performance of the CE Services; and
- (4) take other actions as BPCA may reasonably direct.

(E) Invalid Terminations. In the event that the Consulting Engineer having been terminated for cause, thereafter obtains a determination, in a judicial or other action or proceeding, that such termination was unwarranted, without basis, or invalid for any reason, then the termination shall be deemed to have been one for the convenience of BPCA and the Consulting Engineer shall be entitled to be reimbursed and paid as provided in subsection (C) (Termination for Cause) of this Section but to no other payments or damages.

SECTION 5.2. NO SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES.

In no event shall either party hereto be liable to the other or obligated in any manner to pay to the other any special, incidental, consequential, punitive or similar damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Agreement, or the material falsity or inaccuracy of any

representation made in this Agreement, whether such claims are based upon contract, tort, negligence, warranty or other legal theory; provided, however, that the waiver of the foregoing damages under this Section is intended to apply only to disputes and claims as between BPCA and the Consulting Engineer. Nothing in this Section shall limit the obligation of the Consulting Engineer to indemnify, defend and hold harmless the BPCA Indemnitees for any consequential or punitive damages payable to third parties resulting from any negligent act or willful misconduct, including any failure to meet the Standard of Care, for which the Consulting Engineer is obligated to indemnify the BPCA Indemnitees hereunder.

SECTION 5.3. DISPUTE RESOLUTION PROCEDURES.

(A) Informal Negotiations. Representatives of BPCA and the Consulting Engineer with day-to-day involvement in the administration of this Agreement and the performance of the CE Services shall initially and promptly enter into negotiations to attempt to address and resolve any disputes that may arise concerning this Agreement. In connection with such negotiations, the party asserting the dispute shall provide the other with a written description of the nature of the dispute, along with reasonable supporting documentation. The parties shall consider involving senior representatives and other upper management personnel of each party in the informal negotiation process, as well as other representatives of the parties not actively involved in the day-to-day activities associated with the dispute who might be able to take a broader look at the dispute in the context of the overall objectives of the CE Services and this Agreement. At BPCA's request, the Consulting Engineer shall involve senior representatives of any of its Subconsultants in such negotiations. Upon the expenditure of reasonable efforts towards resolution of a dispute through such informal negotiations without reaching agreement, a party may declare that the informal negotiations have been exhausted and such party may request Non-Binding Mediation.

(B) Rights to Request and Decline Non-Binding Mediation. Subject to the requirements of subsection (A) (Informal Negotiations) of this Section, either party may request Non-Binding Mediation of any dispute arising under this Agreement, whether technical or otherwise. Non-Binding Mediation is voluntary and will not be a condition precedent to initiating the institution of Legal Proceedings by either party. The non-requesting party may decline the request in its discretion. If there is concurrence that any particular matter shall be mediated, the provisions of this Section shall apply. The costs of such Non-Binding Mediation shall be divided equally between BPCA and the Consulting Engineer.

(C) Non-Binding Effect of Non-Binding Mediation. Non-Binding Mediation is intended to assist the parties in resolving disputes over the correct interpretation of this Agreement. No mediator shall be empowered to render a binding decision.

(D) Relation to Judicial Legal Proceedings. Nothing in this Section shall operate to limit, interfere with or delay the right of either party under this Article to commence judicial Legal Proceedings upon a breach of this Agreement by the other party, whether in lieu of, concurrently with, or at the conclusion of any Non-Binding Mediation.

(E) Continued Performance. Notwithstanding any dispute that may arise between BPCA and the Consulting Engineer with respect to the Consulting Engineer's compensation or otherwise under this Agreement, the Consulting Engineer shall continue to perform its responsibilities hereunder, subject to Section 5.1 (BPCA Suspension and Termination Rights).

ARTICLE 6

INSURANCE AND INDEMNIFICATION

SECTION 6.1. INSURANCE.

(A) Required Insurance. At all times during the Term and thereafter as more fully set forth in Appendix 5 (Required Insurance), the Consulting Engineer shall obtain, maintain and comply with the terms and conditions of the Required Insurance, and shall pay all premiums with respect thereto as the same become due and payable.

(B) Subconsultants. The Consulting Engineer shall ensure that all Subconsultants secure and maintain all insurance coverage as more fully set forth in Appendix 5 (Required Insurance) and as required by Applicable Law in connection with their presence on any project site and the performance of their duties concerning the CE Services.

(C) Compliance with Insurer Requirements. The Consulting Engineer shall, and shall cause its Subconsultants to, comply promptly with the requirements of all insurers pertaining to the CE Services. The Consulting Engineer shall not knowingly do or permit anything to be done that results in the cancellation or the reduction of coverage under any policy of Required Insurance.

(D) Failure to Provide Insurance Coverage. The failure of the Consulting Engineer to obtain and maintain any Required Insurance or any denial of coverage by its insurance carriers shall not relieve the Consulting Engineer of its liability for any losses intended to be insured thereby, be a satisfaction of any Consulting Engineer liability under this Agreement or in any way limit, modify or satisfy the Consulting Engineer's indemnity obligations hereunder.

SECTION 6.2. INDEMNIFICATION.

(A) Indemnification by the Consulting Engineer. The Consulting Engineer agrees to defend, indemnify and hold harmless BPCA, BPCPC, the State and each such entity's respective officers, board members, employees, agents and representatives (each a "**BPCA Indemnitee**") from any and all claims, judgments and liabilities for damage to property or injuries to persons natural or otherwise, and including without limitation death and other damages, if and to the extent the same results from the negligence or willful misconduct of the Consulting Engineer or its Subconsultants, or their agents, employees, servants, independent contractors and subcontractors including, but not limited to, claims for compensation, injury or death, and agree to reimburse the BPCA Indemnitees for reasonable attorneys' fees incurred in connection with the above. The Consulting Engineer shall be solely responsible for the safety and protection of all its Subconsultants, or the employees, agents, servants, independent contractors, or subcontractors of the Consulting Engineer or its Subconsultants, and shall assume all liability for injuries, including death, that may occur to said persons to the extent caused by the negligence, fault or default of the Consulting Engineer, its Subconsultants, or their respective agents, employees, servants, independent contractors or subcontractors. The Consulting Engineer's indemnity obligations hereunder shall not be limited by any coverage exclusions or other provisions in any insurance policy maintained by the Consulting Engineer which is intended to respond to such events. The Consulting Engineer shall not, however, be required to reimburse or indemnify any BPCA Indemnitee for any Loss-and-Expense to the extent resulting from the willful misconduct or the negligence of any BPCA Indemnitee. These indemnification provisions shall extend to Loss-and-Expense for damage or injuries occurring after the termination of this Agreement relating to the performance of the services hereunder. These indemnification provisions are for the protection of the BPCA Indemnitees only and shall not establish, of themselves, any liability to other third parties.

(B) Notification. A BPCA Indemnatee shall promptly notify the Consulting Engineer of the assertion of any claim against it for which it is entitled to be indemnified hereunder, and the Consulting Engineer shall have the right to assume the defense of the claim in any Legal Proceeding and to approve any settlement of the claim. The Consulting Engineer and its Subconsultants shall notify BPCA of any claim made against it for money or damages relating to any services performed under this Agreement.

ARTICLE 7

MISCELLANEOUS

SECTION 7.1. OWNERSHIP AND USE OF DELIVERABLE MATERIAL.

The Consulting Engineer acknowledges and agrees that BPCA shall own exclusively any and all Deliverable Material in whatsoever form and character produced or maintained in accordance with, pursuant to, or as a result of this Agreement. The Consulting Engineer hereby irrevocably transfers and assigns to BPCA all of the Consulting Engineer's right, title and interest, throughout the world, in and to the Deliverable Material, including all of the Consulting Engineer's right, title and interest in the copyrights to the Deliverable Material, and the unrestricted right to make modifications, adaptations and revisions to the Deliverable Material and to display the Deliverable Material. The Consulting Engineer hereby waives any so-called "moral rights" with respect to the Deliverable Material. For any intellectual property relating to the Deliverable Material that the parties agree cannot be transferred to BPCA, the Consulting Engineer grants to BPCA a royalty free, worldwide perpetual, irrevocable, nonexclusive license to reproduce, modify, and publicly display any intellectual property relating to the Deliverable Material. BPCA shall have the right, notwithstanding any expiration or termination of this Agreement, to use (or permit use of) and rely upon any Deliverable Material in connection with the Resiliency Projects without further verification or authorization by the Consulting Engineer and the Consulting Engineer shall be responsible for the accuracy and correctness of such Deliverable Material, and all ideas or methods represented by such Deliverable Material, without additional compensation. BPCA's use of any such Deliverable Material for any purpose other than in connection with the implementation of the applicable Resiliency Project shall be at its own risk and the Consulting Engineer shall have no liability therefor.

SECTION 7.2. RELATIONSHIP OF THE PARTIES.

The Consulting Engineer is an independent contractor of BPCA and the relationship between the parties shall be limited to performance of this Agreement in accordance with its terms. Neither party shall have any responsibility with respect to the services to be provided or contractual benefits assumed by the other party. Nothing in this Agreement shall be deemed to constitute either party a partner, agent or legal representative of the other party. No liability or benefits, such as workers compensation, pension rights or liabilities, or other provisions or liabilities arising out of or related to a contract for hire or employer/employee relationship shall arise or accrue to any party's agent or employee as a result of this Agreement or the performance thereof.

SECTION 7.3. CONTRACT ADMINISTRATION.

(A) Administrative Communications. The parties recognize that a variety of contract administrative matters will routinely arise throughout the Term. These matters will by their nature involve requests, notices, questions, assertions, responses, objections, reports, claims, and other communications made personally, in meetings, by phone, by mail and by electronic and computer communications. The purpose of this Section is to set forth a process by which the resolution of the matters, once resolution is reached, can be formally reflected in the common records of the parties so as to permit the orderly and effective administration of this Agreement.

(B) Contract Administration Memoranda. The principal formal tool for the administration of routine matters arising under this Agreement between the parties shall be a "**Contract Administration Memorandum**". A Contract Administration Memorandum shall be prepared, once all preliminary communications have been concluded, to evidence the resolution

reached by BPCA and the Consulting Engineer as to matters of interpretation and application arising during the course of the performance of their obligations hereunder. Such matters may include, for example: (1) issues as to the meaning, interpretation or application of this Agreement in particular circumstances or conditions; (2) calculations required to be made; (3) notices, waivers, releases, satisfactions, confirmations, further assurances, consents and approvals given hereunder; and (4) other similar routine contract administration matters. An example form of a Contract Administration Memorandum is set forth in Appendix 7 (Form of Contract Administration Memorandum).

(C) Procedure. Either party may request the execution of a Contract Administration Memorandum. When resolution of the matter is reached, a Contract Administration Memorandum shall be prepared by or at the direction of BPCA reflecting the resolution. Contract Administration Memoranda shall be serially numbered, dated, and signed by an authorized officer for the Consulting Engineer and by an authorized officer for BPCA. BPCA and the Consulting Engineer each shall maintain a parallel, identical file of all Contract Administration Memoranda, separate and distinct from all other documents relating to the administration and performance of this Agreement.

(D) Effect. Executed Contract Administration Memoranda shall serve to guide the ongoing interpretation and application of the terms and conditions of this Agreement.

SECTION 7.4. ASSIGNMENT AND CHANGE IN CONTROL.

This Agreement is based upon the Consulting Engineer's special qualifications for the performance of the CE Services contemplated herein. Accordingly, the Consulting Engineer shall not assign or transfer any interest in this Agreement without the prior written consent of BPCA. The Consulting Engineer acknowledges and agrees that, except as may be otherwise provided under Applicable Law, such prohibition on assignment includes any assignment associated with a sale, consolidation, reorganization or merger involving the Consulting Engineer. BPCA, however, may assign this Agreement in whole or in part without the Consulting Engineer's prior written consent.

SECTION 7.5. FURTHER ACTIONS.

The Consulting Engineer shall take all such action as may be required to preserve the enforceability of this Agreement.

SECTION 7.6. BINDING EFFECT.

This Agreement shall be binding upon and inure to the benefit of BPCA and the Consulting Engineer, and each of their respective permitted successors and assigns.

SECTION 7.7. CONFIDENTIALITY.

The Consulting Engineer hereby agrees that data, recommendations, reports and other materials developed in the course of the CE Services or provided by BPCA to the Consulting Engineer are strictly confidential between the Consulting Engineer and BPCA and except as specifically provided herein, the Consulting Engineer may not at any time reveal or disclose such data, recommendations, reports or BPCA-provided information in whole or in part to any third party without first obtaining written approval from BPCA.

SECTION 7.8. AMENDMENTS, CHANGES AND MODIFICATIONS.

This Agreement may not be amended, changed or modified and none of its provisions may be waived, except with the prior written consent of BPCA and the Consulting Engineer. No oral statements of any person shall, in any manner or degree, modify or otherwise affect the terms of this Agreement. Furthermore, neither party's failure or neglect to enforce any right under this Agreement will be deemed to be a waiver of such right or any other right at such time or in the future.

SECTION 7.9. RETENTION AND AUDIT OF BOOKS AND RECORDS.

(A) Books and Records. The Consulting Engineer shall prepare and maintain proper, accurate and complete books and records regarding the CE Services and all other transactions related to the CE Services, including all books of account, bills, vouchers, invoices, personnel rate sheets, cost estimates and bid computations and analyses, Subconsultant Agreements, time books, daily job diaries and reports, correspondence, and any other documents showing all acts and transactions in connection with or relating to or arising by reason of the CE Services, any Subconsultant Agreement or any operations or transactions in which BPCA has or may have a financial or other material interest hereunder. The Consulting Engineer and its Subconsultants shall produce such books and records for inspection, audit and reproduction for all such purposes within 10 days of request by BPCA and any of their authorized representatives. All financial records of the Consulting Engineer and its Subconsultants shall be maintained in accordance with generally accepted accounting principles and generally accepted auditing standards. The Consulting Engineer shall retain and keep accessible all books, documents, papers and records that are directly related to this Agreement or the Resiliency Projects for a minimum of six years, or such longer period as may be required by Applicable Law, following the termination or expiration of this Agreement. If there are unresolved disputes or audit questions at the end of the retention period, the Consulting Engineer shall retain the records until the disputes or questions are resolved.

(B) Audit. BPCA and any of their authorized representatives may perform an audit, investigation or otherwise independently verify at any time any payment request or certification by the Consulting Engineer; provided, however, that such audit, investigation and verification rights with respect to lump sum prices, unit rates, fixed percentages, established charges or hourly rates agreed to by the parties hereto shall be limited to the application of such amounts, charges, percentages and rates and shall not result in an audit of the makeup of the agreed upon amount, charge, percentage or rate itself. The Consulting Engineer shall not be entitled to reimbursement or other compensation for costs associated with such audit, investigation, verification or certification. The Consulting Engineer will provide the evidence necessary to substantiate charges related to the CE Services and allow BPCA reasonable access to the Consulting Engineer's books and records. The Consulting Engineer shall require all Subconsultants to comply with the provisions of this Section and include the requirements hereof in the written contract between the Consulting Engineer and the Subconsultant. The Consulting Engineer shall also require all Subconsultants to include the requirements of this Section in any lower tier Subconsultant Agreements relating to the CE Services.

(C) Overpayment. In the event an audit conducted pursuant to subsection (B) (Audit) of this Section shall determine that the Consulting Engineer cannot document a cost or expense for which payment has been made, or that BPCA has overpaid the Consulting Engineer, the Consulting Engineer, upon demand, shall refund to BPCA the amounts overpaid or undocumented. If the overpayment exceeds 5% of the total amount that should have been properly paid by BPCA during the period audited, then the Consulting Engineer shall, in addition, reimburse BPCA for any and all reasonable Fees and Costs incurred in connection with the

inspection or audit. Payments to the Consulting Engineer or approval by BPCA of any request for payment submitted by the Consulting Engineer, shall in no way affect the Consulting Engineer's obligation hereunder or the right of BPCA to obtain a refund of any payment to the Consulting Engineer which is in excess of that to which it was lawfully entitled.

SECTION 7.10. NOTICES.

(A) Procedure. All notices permitted or required hereunder shall be in writing and shall be transmitted either:

- (1) by certified or registered United States mail, return receipt requested;
- (2) by personal delivery;
- (3) by FedEx, UPS or other recognized expedited delivery service; or
- (4) by e-mail (provided that receipt of electronic mail is acknowledged by the recipient).

Such notices shall be addressed to the parties as set forth in subsections (B) and (C) of this Section, or to such different addresses as the parties may from time-to-time designate in writing transmitted as set forth above. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of email, upon receipt; provided that any delivery that is not during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a business day, shall be deemed to have been given upon the commencement of business hours on the next business day.

(B) BPCA Notice Address. Notices required to be given to BPCA shall be addressed as follows:

Battery Park City Authority
200 Liberty Street, 24th Floor
New York, NY 10281
Attn: Real Property Department
with a copy to: General Counsel.

(C) Consulting Engineer Notice Address. Notices required to be given to the Consulting Engineer shall be addressed as follows:

[CONSULTING ENGINEER TO SUPPLY]

SECTION 7.11. CONSULTING ENGINEER COVENANTS, REPRESENTATIONS AND WARRANTIES.

(A) Consulting Engineer Covenants. The Consulting Engineer covenants and agrees that:

- (1) recognizing that time for completion of the CE Services is of the essence, the Consulting Engineer shall perform all of its obligations hereunder in a prompt and

workmanlike manner and in accordance with the time periods for the CE Services set forth herein;

(2) the personnel assigned and any Subconsultants used by the Consulting Engineer in the performance of the CE Services hereunder shall be qualified in all respects for such assignment, employment and use;

(3) the Consulting Engineer, in the performance of the CE Services, shall utilize the most efficient available methodology and technology for the purpose of reducing the cost and time of such performance;

(4) the Consulting Engineer shall comply with the provisions of all federal, State and local statutes, laws, rules, ordinances and regulations that are applicable to the performance of this Agreement;

(5) should any claim be made or any action be brought against BPCA that is in any way related to the CE Services, the Consulting Engineer shall diligently render to BPCA any and all assistance that may be reasonably required by BPCA as a result thereof; and

(6) the Consulting Engineer shall not commit its personnel to, nor engage in, any other projects during the term of this Agreement to the extent that such projects may adversely affect the quality or efficiency of the CE Services or would otherwise be detrimental to the conduct and completion of the CE Services, and the Consulting Engineer shall provide sufficient numbers of qualified personnel as shall be required to perform the CE Services in the time requested by BPCA.

(B) Consulting Engineer Representations and Warranties. The Consulting Engineer represents and warrants that:

(1) no public official is directly or indirectly interested in this Agreement, or in the supplies, materials, equipment, work, labor or services to which it relates or in any of the profits thereof;

(2) except as set forth in this Agreement, the Consulting Engineer has, and shall have, no interest, direct or indirect, in the Resiliency Projects to which the CE Services relates;

(3) to the best of its knowledge, upon due inquiry, no officer, member, partner or employee of Consulting Engineer has, prior to the date of this Agreement, been called before a grand jury, head of a state agency, head of a city department or other city agency to testify in an investigation concerning any transaction or contract had with the State, any political subdivision thereof, a public authority, or with any public department, agency or official of the State of or any political subdivision thereof, and refused to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract;

(4) to the best of its knowledge, any materials provided by the Consulting Engineer for inclusion in the CE Services shall not infringe upon the copyright or trademark of any third party; and

(5) the Consulting Engineer is a [_____] duly organized, validly existing and in good standing under the laws of the State of [_____] and has authority

to do business in the State and in any other state in which it conducts its activities, with the full legal right, power and authority to enter into and perform its obligations under this Agreement.

SECTION 7.12. EXECUTORY CONTRACT.

It is understood by and between the parties hereto that this Agreement shall be deemed executory to the extent of the monies available to BPCA and no liability on account thereof shall be incurred by BPCA beyond monies available for the purpose thereof. In no event shall any claim be asserted under this Agreement by the Consulting Engineer or any Subconsultant against any member, officer, employee, lessee, consultant or agent of BPCA or the State. By execution of this Agreement, the Consulting Engineer agrees to look solely to BPCA with respect to any claim that may arise.

SECTION 7.13. PARTICIPATION IN INTERNATIONAL BOYCOTT PROHIBITED.

The Consulting Engineer agrees, as a material condition of this Agreement, that neither the Consulting Engineer nor any substantially owned or affiliated person, firm, partnership or corporation has participated or is participating or shall participate in an international boycott in violation of the provisions of the United States Export Administration Act of 1969, as amended, or the United States Export Administration Act of 1979, as amended, or the Regulations of the United States Department of Commerce promulgated thereunder. This Agreement shall be rendered forfeited and void by the Comptroller of the State if, subsequent to execution, such person, firm, partnership or corporation has been convicted of a violation of the provisions of either of such federal acts or such regulations or has been found upon the final determination of the United States Commerce Department or any other appropriate agency of the United States to have violated the provisions of either of such federal acts or such regulations.

SECTION 7.14. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.

The Consulting Engineer hereby certifies that it and any individual or legal entity in which it holds a 10% or greater ownership interest, and any individual or legal entity that holds a 10% or greater ownership in it, either have no business operations in Northern Ireland, or shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, as set forth in Section 165(5) of the New York State Finance Law, and shall permit independent monitoring of their compliance with such principles.

SECTION 7.15. LIMITATION PERIODS.

Any legal action or proceeding against BPCA must be commenced no later than one year after the earlier of: (a) the termination of this Agreement, or (b) the last day the Consulting Engineer performed any CE Services.

SECTION 7.16. IRAN DIVESTMENT ACT.

By signing this Agreement, each person and each person signing on behalf of any other party certifies, and in the case of a joint bid or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law.

SECTION 7.17. TERMINATION FOR FAILURE TO DISCLOSE UNDER NYS FINANCE LAW §139K.

BPCA reserves the right to terminate this Agreement in the event it is found that the certification filed by the Consulting Engineer pursuant to New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, BPCA may exercise its termination right by providing written notification to the Consulting Engineer in accordance with the written notification terms of this contract.

SECTION 7.18. COMPTROLLER'S APPROVAL.

If this contract is considered an eligible contract as defined by Title 2 of NYCRR Part 206, it is subject to the New York State Comptroller's approval, and therefore shall not be valid and enforceable until that approval has been obtained. A contract is considered "eligible" as defined by Title 2 of NYCRR Part 206, if it is not a specifically exempt contract, is executed by a state authority on or after March 1, 2010 where the aggregate consideration under the contract may reasonably be valued in excess of one million dollars, and the contract is either (1) awarded on a single-source basis, sole-source basis or pursuant to any other method of procurement that is not a competitive procurement or (2) supported in whole or part with funds appropriated from the Community Projects Fund (007).

IN WITNESS WHEREOF, BPCA and the Consulting Engineer have caused this Agreement to be executed by their duly authorized representatives as of the Commencement Date.

HUGH L. CAREY BATTERY PARK CITY
AUTHORITY

[CONSULTING ENGINEER]

By: _____

By: _____

Printed Name:

Printed Name:

Title:

Title:

FEIN#:

APPENDICES
TO THE
CONSULTING ENGINEER SERVICES AGREEMENT
FOR BATTERY PARK CITY FLOOD RESILIENCY PROJECTS

between
BATTERY PARK CITY AUTHORITY
and
[CONSULTING ENGINEER]

Dated as of
[_____]

APPENDIX 1
SCOPE OF BASE SERVICES

APPENDIX 1

SCOPE OF BASE SERVICES

[NOTE TO PROPOSERS: Scope of Base Services to be included here based on Attachment A (Anticipated Scope of Services) to the RFP, as the same may be modified through negotiations between BPCA and the selected Proposer.]

APPENDIX 2
COMPENSATION

APPENDIX 2
COMPENSATION

[NOTE TO PROPOSERS: To be completed based on selected Proposer's Cost Proposal.]

Task Number	Task Description	Budget
0	General Program Management	N/A
1	Initial Start-Up Activities	\$[_____]
2	Combined North and West PDB Project Technical Requirements Development (Pre-PDB Contract)	\$[_____]
3	Environmental Review and Other Permitting	\$[_____]
4	Development of PDB Contract Procurement Documents	\$[_____]
5	PDB Contract Phase 1 Services Preconstruction Oversight	\$[_____]
6	PDB Contract Phase 2 Work Construction Oversight	\$[_____]
7	Combined North and West PDB Project Completion and PDB Contract Closeout	\$[_____]
8	Other CE Services	\$[_____]
TOTAL		\$[_____]

APPENDIX 3
SCHEDULE OF FEES AND CHARGES

APPENDIX 3

SCHEDULE OF FEES AND CHARGES

[NOTE TO PROPOSERS: Rates and categories of reimbursable expenses to be supplied based on selected Proposer's proposal.]

The hourly rates set forth herein shall be eligible for an increase every January 1, beginning on January 1, 2022, to account for general inflation based on the percentage change from January to January in the All Urban Consumers All Items Consumer Price Index in the New York-Newark-Jersey City area, not seasonally adjusted, as published by the Bureau of Labor Statistics at https://www.bls.gov/regions/new-york-new-jersey/news-release/consumerpriceindex_newyorkarea.htm.

APPENDIX 4

KEY PERSONNEL AND APPROVED SUBCONSULTANTS; STAFFING PLAN

APPENDIX 4

KEY PERSONNEL AND APPROVED SUBCONSULTANTS; STAFFING PLAN

Organizational Chart:

[NOTE TO PROPOSERS: To be supplied based on selected proposer's proposal.]

Key Personnel:

CE Services Director – [NOTE TO PROPOSERS: To be supplied based on selected proposer's proposal.]

Approved Subconsultants:

[NOTE TO PROPOSERS: To be supplied based on selected proposer's proposal.]

APPENDIX 5
REQUIRED INSURANCE

APPENDIX 5

REQUIRED INSURANCE

5.1. REQUIRED INSURANCE IN GENERAL

The Consulting Engineer shall obtain, pay for and maintain (and cause its Subconsultants to obtain, pay for and maintain, as required in this Appendix), the insurance coverage listed below (the “**Required Insurance**”) during the Term and thereafter as specifically set forth below. Failure to provide and maintain the Required Insurance will constitute a material breach of this Agreement.

5.2. CONSULTING ENGINEER REQUIRED INSURANCE

The Required Insurance for the Consulting Engineer is as follows:

(a) Worker’s compensation, employer’s liability insurance (including United States Longshoreman & Harbor Workers and Jones Act coverages) and disability benefits during the Term for the benefit of such employees as are required to be insured by the applicable provisions of law and voluntary compensation for employees excluded from statutory benefits.

(b) Commercial general liability insurance, as follows:

1. Coverage must be written on ISO Form CG 00 001 or its equivalent and with no modification to the contractual liability coverage provided therein, and shall be provided on an occurrence basis with limits not less than: \$1,000,000 per occurrence; \$2,000,000 general aggregate, which must apply on a per location/per project basis; and \$2,000,000 products/completed operations aggregate;

2. BPCA, BPCPC and the State must be protected as additional insureds on ISO Form CG 2010 (11/85) or its equivalent on policies held by the Consulting Engineer. The policy must provide coverage for defense and indemnification of claims and lawsuits, including third party actions, claims and lawsuits for bodily injury to the employees of the Consulting Engineer or Subconsultants arising from the injured worker’s employment with the Consulting Engineer or any of its Subconsultants

3. The Consulting Engineer must maintain products/completed operations coverage for no less than three years after the CE Services are completed and continue to include additional insured protection for BPCA, BPCPC and the State for the prescribed timeframe and coverage shall contain, in addition to any other provisions required hereby, a provision that the policy shall not be changed, canceled or reduced by the policy holder. As a condition precedent to the making of final payment, the Consulting Engineer shall furnish BPCA with a then current certificate of insurance that confirms the completed operations coverage is in effect.

4. When providing evidence of this insurance the Consulting Engineer must include a completed Acord 855 NY form.

5. Securing the required limits via a combination of primary and umbrella/excess liability policies is allowed. The general aggregate limit must apply on a per project basis on the primary general liability policy should a combination of primary and umbrella/excess liability policies be utilized to secure the required total limits of coverage.

(c) Automobile liability insurance covering the use in connection with the CE Services of all owned, non-owned and hired vehicles. The coverage must protect BPCA, BPCPC, and the State as additional insureds under such policy and shall not be less than a \$1,000,000 combined single limit.

(d) Professional liability insurance must be maintained at a limit of not less than \$10,000,000 per claim.

5.3. SUBCONSULTANT REQUIRED INSURANCE

The Required Insurance for each Subconsultant is as follows:

(a) Worker's compensation, employer's liability insurance (including United States Longshoreman & Harbor Workers and Jones Act coverages) and disability benefits during the Term for the benefit of such employees as are required to be insured by the applicable provisions of law and voluntary compensation for employees excluded from statutory benefits.

(b) Commercial general liability insurance, as follows:

1. Coverage must be written on ISO Form CG 00 001 or its equivalent and with no modification to the contractual liability coverage provided therein, and shall be provided on an occurrence basis with limits not less than: \$1,000,000 per occurrence; \$2,000,000 general aggregate, which must apply on a per location/per project basis; and \$2,000,000 products/completed operations aggregate;

2. BPCA, BPCPC and the State must be protected as additional insureds on ISO Form CG 2010 (11/85) or its equivalent on policies held by any Subconsultants. Subconsultants may not use blanket additional insured endorsements to provide additional insured protection to BPCA, BPCPC, and the State "by written contract" but must use ISO Form CG 2010 (11/85) or its equivalent. The policy must provide coverage for defense and indemnification of claims and lawsuits, including third party actions, claims and lawsuits for bodily injury to the employees of the Consulting Engineer or Subconsultants arising from the injured worker's employment with the Consulting Engineer or any of its Subconsultants

3. If any physical work at a project site is to be performed, Subconsultants must maintain products/completed operations coverage for no less than three years after the CE Services are completed and continue to include additional insured protection for BPCA, BPCPC and the State for the prescribed timeframe and coverage shall contain, in addition to any other provisions required hereby, a provision that the policy shall not be changed, canceled or reduced by the policy holder. As a condition precedent to the making of final payment, the Consulting Engineer shall furnish BPCA with a then current certificate of insurance that confirms the completed operations coverage is in effect.

4. When providing evidence of this insurance Subconsultants must include a completed Acord 855 NY form.

(c) Automobile liability insurance covering the use in connection with the CE Services for the Subconsultant of all owned, non-owned and hired vehicles. The coverage must protect BPCA, BPCPC, and the State as additional insureds under such policy and shall not be less than a \$1,000,000 combined single limit.

5.4. GENERAL INSURANCE REQUIREMENTS

(a) The Consulting Engineer shall not commence performance of the CE Services until the Consulting Engineer has obtained, and required each Subconsultant to obtain, all the insurance required under this Appendix and until it has furnished to BPCA the certificate or certificates of insurance required by Section 5.4(b) of this Appendix.

(b) The Consulting Engineer shall furnish to BPCA, before or upon execution of this Agreement, a certificate or certificates of the insurance required under this Appendix and, upon BPCA's request, certified copies of the original policies of insurance, within the time period required by BPCA and before commencing performance of the CE Services. Such certificate or certificates shall be in form satisfactory to BPCA, shall list the various coverages and shall contain, in addition to any other provisions required hereby, a provision that the policy shall not be changed, canceled or reduced by the policy holder and that it shall be automatically renewed upon expiration and continued in force until two years after the CE Services are completed, unless BPCA is given 90 days' written notice to the contrary. Such certificates shall also include riders providing that violation of any of the terms of any policy shall not by itself invalidate such policy. Such policies and certificates must name as additional insureds BPCA, BPCPC and the State.

(c) The Required Insurance must provide direct written notice of cancellation or non-renewal to BPCA, BPCPC, and the State at least 30 days before such cancellation or non-renewal is effective, except for cancellations due to non-payment of premium, in which case 10 days written notice is acceptable

(d) All insurance required to be procured and maintained must be procured from insurance companies that have a financial rating by A.M. Best Company as published in the most current key rating guide of rating level of A- or better, Class VII or better and which are authorized to do business in the State.

(e) If at any time any of the required insurance policies should be canceled, terminated or modified so that insurance is not in effect as required, then the Consulting Engineer shall suspend performance of the CE Services. If the CE Services is suspended then BPCA may, at BPCA's option, obtain insurance affording coverage equal to that required herein and the cost of such insurance shall be payable by the Consulting Engineer to BPCA.

(f) All additional insured protection afforded BPCA, BPCPC, and the State must be on a primary and non-contributory basis and all policies must include a waiver of subrogation in favor of BPCA, BPCPC, and the State. No policies may contain any limitations / exclusions for New York Labor Law claims, and cross liability coverage must be provided for BPCA, BPCPC, and the State.

(g) The insurance required under Section 5.2(b), Section 5.2(c), Section 5.3(b) and 5.3(c) of this Appendix shall provide that the insurance company or an attorney approved and retained by the insurance company shall defend any suit or proceeding against BPCA or any officers, agents or employees of BPCA whether or not such suit is groundless, false or fraudulent. Notwithstanding the foregoing, BPCA shall have the right to engage its own attorneys for the purpose of defending any suit or proceeding against it or its respective officers, agents or employees, and, in such event, the Consulting Engineer shall, indemnify BPCA for all attorneys' fees and disbursements and other costs incurred by it arising out of, or incurred in connection with, any such defense.

(h) BPCA, at BPCA's cost and expense, may, at its sole option, procure and maintain such insurance as shall in the opinion of BPCA, protect BPCA from contingent liability of BPCA to others for damages arising from bodily injury, including death and property damages which may arise from operations under this Agreement. The procurement and maintenance of such insurance by BPCA shall not in any way be construed or be deemed to relieve the Consulting Engineer from, or to be a limitation on the nature or extent of, such obligations and risk.

(i) Regardless of the consent to exclusions, coverage limitations or deductible amounts by BPCA, the Consulting Engineer shall be responsible for the payment of any deductibles.

APPENDIX 6
DIVERSITY AND EMPLOYMENT REQUIREMENTS

APPENDIX 6

DIVERSITY AND EMPLOYMENT REQUIREMENTS

6.1. PARTICIPATION BY MINORITY AND WOMEN OWNED BUSINESS ENTERPRISES

6.1.1 General Provisions

(a) BPCA is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“**NYCRR**”) for all contracts, as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

(b) The Consulting Engineer agrees, in addition to any other nondiscrimination provision herein and at no additional cost to BPCA, to fully comply and cooperate with BPCA in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“**EEO**”) and contracting opportunities for New York State-certified minority and women-owned business enterprises (“**MWBEs**”). The Consulting Engineer’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “**Human Rights Law**”) and other applicable federal, state, and local laws.

(c) Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility or a breach of contract, leading to the assessment of liquidated damages pursuant to Section 6.1.7 of this Appendix and such other remedies as are available to BPCA.

6.1.2 MWBE Contract Goals

(a) For purposes of this Agreement, BPCA hereby establishes an overall goal of 30% for MWBE participation, 15% for New York State-certified minority-owned business enterprise (“**MBE**”) participation and 15% for New York State-certified women-owned business enterprise (“**WBE**”) participation (collectively, “**MWBE Contract Goals**”) based on the current availability of MBEs and WBEs.

(b) For purposes of providing meaningful participation by MWBEs on this Agreement and achieving the MWBE Contract Goals established immediately above, the Consulting Engineer should reference the directory of MWBEs at the following internet address: <https://ny.newnycontracts.com>.

(c) Additionally, the Consulting Engineer is encouraged to contact the Division of Minority and Women’s Business Development at (212) 803-2414 to discuss additional methods of maximizing participation by MWBEs on this Agreement.

(d) The Consulting Engineer understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25% of the total value of the contract.

(e) The Consulting Engineer must document “good faith efforts,” pursuant to 5 NYCRR §142.8, to provide meaningful participation by MWBEs as Subconsultants and suppliers in the performance of this Agreement. Such documentation shall include, but not necessarily be limited to:

1. Evidence of outreach to MWBEs;
2. Any responses by MWBEs to the Consulting Engineer’s outreach;
3. Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
4. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by BPCA with MWBEs; and,
5. Information describing specific steps undertaken by the Consulting Engineer to reasonably structure the CE Services to maximize opportunities for MWBE participation.

6.1.3 Equal Employment Opportunity

(a) The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to this Agreement.

(b) In performing this Agreement, the Consulting Engineer shall:

1. Ensure that each the Consulting Engineer and Subconsultant performing work on this Agreement shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
2. The Consulting Engineer shall submit an EEO policy statement to BPCA within seventy-two (72) hours after the date of the notice by BPCA to award this Agreement to the Consulting Engineer.
3. If the Consulting Engineer, or any of its Subconsultants, does not have an existing EEO policy statement, BPCA may require the Consulting Engineer or Subconsultant to adopt a model statement based on Attachment 6A (M/WBE and EEO Policy Statement) hereto.
4. The Consulting Engineer’s EEO policy statement shall include the following language:

(i) The Consulting Engineer will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without

discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.

(ii) The Consulting Engineer shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

(iii) The Consulting Engineer shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Consulting Engineer's obligations herein.

(iv) The Consulting Engineer will include the provisions of this subsection 6.1.3(b)(4), which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each Subconsultant as to the CE Services.

(c) To ensure compliance with this Section, the Consulting Engineer shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of this Agreement by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The Consulting Engineer shall complete the staffing plan form (<https://www.ogs.ny.gov/MWBE/Docs/EEO100.docx>) and submit it as part of their bid or proposal or within a reasonable time, as directed by BPCA.

(d) The Consulting Engineer shall submit a Workforce Utilization Report (https://its.ny.gov/sites/default/files/documents/eeo_workforce_utilization_report.xlsx) and shall require each of its Subconsultants to submit a Workforce Utilization Report, in such form as shall be required by BPCA on a quarterly basis during the term of this Agreement. Separate forms shall be completed by the Consulting Engineer and any Subconsultants. Pursuant to Executive Order #162, the Consulting Engineers and Subconsultants are also required to report the gross wages paid to each of their employees for the work performed by such employees on the contract on a quarterly basis.

(e) The Consulting Engineer shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. the Consulting Engineer and its Subconsultants shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

6.1.4 MWBE Utilization Plan

(a) The Consulting Engineer represents and warrants that the Consulting Engineer has submitted an MWBE Utilization Plan, or shall submit an MWBE Utilization Plan at such time as shall be required by BPCA, through the New York State Contract System (“**NYSCS**”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that the Consulting Engineer may arrange to provide such evidence via a non-electronic method to BPCA, either prior to, or at the time of, the execution of the contract.

(b) The Consulting Engineer agrees to adhere to such MWBE Utilization Plan in the performance of the CE Services

(c) The Consulting Engineer further agrees that failure to submit or adhere to such MWBE Utilization Plan shall constitute a material breach of the terms of this Agreement. Upon the occurrence of such a material breach, BPCA shall be entitled to any remedy provided herein, including but not limited to, a finding that the Consulting Engineer is non-responsive.

6.1.5 Waivers

(a) If the Consulting Engineer, after making good faith efforts, is unable to achieve the MWBE Contract Goals stated herein, the Consulting Engineer may submit a request for a waiver through the NYSCS, or a non-electronic method provided by BPCA. Such waiver request must be supported by evidence of the Consulting Engineer’s good faith efforts to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, BPCA shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.

(b) If BPCA, upon review of the MWBE Utilization Plan, quarterly MWBE the Consulting Engineer Compliance Reports described in Section 6.1.3(d) of this Appendix, or any other relevant information, determines that the Consulting Engineer is failing or refusing to comply with the MWBE Contract Goals, and no waiver has been issued in regards to such non-compliance, BPCA may issue a notice of deficiency to the Consulting Engineer. The Consulting Engineer must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

6.1.6 Compliance Report

The Consulting Engineer is required to submit a quarterly MWBE the Consulting Engineer Compliance Report through the NYSCS, provided, however, that the Consulting Engineer may arrange to provide such report via a non-electronic method to BPCA by the 10th day following the end of each quarter during the term of this Agreement.

6.1.7 Liquidated Damages – MWBE Participation

(a) Where BPCA determines that the Consulting Engineer is not in compliance with the requirements of this Appendix and the Consulting Engineer refuses to comply with such requirements, or if the Consulting Engineer is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Consulting Engineer shall be obligated to pay to BPCA liquidated damages.

(b) Such liquidated damages shall be calculated as an amount equaling the difference between:

1. All sums identified for payment to MWBEs had the Consulting Engineer achieved the contractual MWBE goals; and

2. All sums actually paid to MWBEs for work performed or materials supplied under this Agreement.

(c) In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by BPCA, the Consulting Engineer shall pay such liquidated damages to BPCA within sixty days after they are assessed. Provided, however, that if the Consulting Engineer has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Consulting Engineer following the complaint process.

6.2. PARTICIPATION BY SERVICE-DISABLED VETERAN-OWNED BUSINESSES

6.2.1 General Provisions

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by New York State-certified Service-Disabled Veteran-Owned Businesses (“**SDVOB**”), thereby further integrating such businesses into New York State's economy. BPCA recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of BPCA contracts. In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, the Consulting Engineers are expected to consider SDVOBs in the fulfillment of the requirements of this Agreement. Such participation may be as Subconsultants or suppliers, as protégés, or in other partnering or supporting roles.

6.2.2 SDVOB Contract Goals

(a) BPCA hereby establishes an overall goal of 6% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Consulting Engineer should reference the directory of New York State Certified SDVOBs found at: http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf. Questions regarding compliance with SDVOB participation goals should be directed to Anthony Peterson at anthony.peterson@bpca.ny.gov or (212) 417-2337. Additionally, following execution of this Agreement, the Consulting Engineer is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on this Agreement.

(b) The Consulting Engineer must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of this Agreement.

6.2.3 SDVOB Utilization Plan

(a) In accordance with 9 NYCRR § 252.2(i), the Consulting Engineers are required to submit a completed “**SDVOB Utilization Plan**” on Form SDVOB 100

(https://ogs.ny.gov/Veterans/Docs/2016/SDVOB_100_Utilization_Plan.docx) with their bid.

(b) The Utilization Plan shall list the SDVOBs that the Consulting Engineer intends to use to perform the CE Services, a description of the CE Services that the Consulting Engineer intends the SDVOB to perform to meet the goals on this Agreement, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of CE Services the SDVOB will perform. By signing the Utilization Plan, the Consulting Engineer acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the contract award and during the term of this Agreement must be reported on a revised SDVOB Utilization Plan and submitted to BPCA.

(c) BPCA will review the submitted SDVOB Utilization Plan and advise the Consulting Engineer of BPCA acceptance or issue a notice of deficiency within 20 days of receipt.

(d) If a notice of deficiency is issued, the Consulting Engineer agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to BPCA a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by BPCA to be inadequate, BPCA shall notify the Consulting Engineer and direct the Consulting Engineer to submit, within five business days of notification by BPCA, a request for a partial or total waiver of SDVOB participation goals on Form SDVOB 200 (https://ogs.ny.gov/Veterans/Docs/2016/SDVOB_200_Waiver_Form.docx). Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

(e) BPCA may disqualify a the Consulting Engineer's bid or proposal as being non-responsive under the following circumstances:

1. If the Consulting Engineer fails to submit an SDVOB Utilization Plan;
2. If the Consulting Engineer fails to submit a written remedy to a notice of deficiency;
3. If the Consulting Engineer fails to submit a request for waiver; or
4. If BPCA determines that the Consulting Engineer has failed to document good faith efforts.

(f) The Consulting Engineer certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on this Agreement pursuant to the prescribed SDVOB contract goals set forth above.

(g) The Consulting Engineer further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of this Agreement. Upon the occurrence of such a material breach, BPCA shall be entitled to any remedy provided herein, including but not limited to, a finding of the Consulting Engineer non-responsibility.

6.2.4 Waivers

(a) Prior to submission of a request for a partial or total waiver, the Consulting Engineer shall speak to Anthony Peterson at anthony.peterson@bpca.ny.gov or (212) 417-2337 for guidance.

(b) In accordance with 9 NYCRR § 252.2(m), a the Consulting Engineer that is able to document good faith efforts to meet the goal requirements, as set forth in Section 6.2.5 of this Appendix, may submit a request for a partial or total waiver on Form SDVOB 200 (https://ogs.ny.gov/Veterans/Docs/2016/SDVOB_200_Waiver_Form.docx), accompanied by supporting documentation. The Consulting Engineer may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by BPCA at that time, the provisions of Section 6.2.3(c), Section 6.2.3(d) and Section 6.2.3(e) will apply. If the documentation included with the Consulting Engineer's waiver request is complete, BPCA shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.

(c) The Consulting Engineer shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the CE Services. Requests for a partial or total waiver of established goal requirements made subsequent to award of this Agreement may be made at any time during the term of this Agreement to BPCA, but must be made no later than prior to the submission of a request for final payment.

(d) If BPCA, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report determines that the Consulting Engineer is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, BPCA may issue a notice of deficiency to the Consulting Engineer. The Consulting Engineer must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals. Waiver requests should be sent to BPCA.

6.2.5 Required Good Faith Efforts

In accordance with 9 NYCRR § 252.2(n), the Consulting Engineers must document their good faith efforts toward utilizing SDVOBs on this Agreement. Evidence of required good faith efforts shall include, but not be limited to, the following:

(a) Copies of solicitations to SDVOBs and any responses thereto.

(b) Explanation of the specific reasons each SDVOB that responded to the Consulting Engineers' solicitation was not selected.

(c) Dates of any pre-bid, pre-award or other meetings attended by the Consulting Engineer, if any, scheduled by BPCA with certified SDVOBs whom BPCA determined were capable of fulfilling the SDVOB goals set in this Agreement.

(d) Information describing the specific steps undertaken to reasonably structure the CE Services for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.

(e) Other information deemed relevant to the waiver request.

6.2.6 Monthly SDVOB the Consulting Engineer Compliance Report

In accordance with 9 NYCRR § 252.2(q), the Consulting Engineer is required to report monthly SDVOB Consulting Engineer compliance to BPCA during the term of this Agreement for the preceding month's activity, documenting progress made towards achieving the SDVOB goals. This information must be submitted using form SDVOB 101 available at https://ogs.ny.gov/Veterans/Docs/2016/SDVOB_101_Monthly_Compliance%20Report.docx and should be completed by the Consulting Engineer and submitted to BPCA, by the 10th day of each month during the term of this Agreement, for the preceding month's activity to: Anthony Peterson at anthony.peterson@bpca.ny.gov.

6.2.7 Breach of Contract and Damages

In accordance with 9 NYCRR § 252.2(s), any the Consulting Engineer found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in this Agreement, shall be found to have breached this Agreement and the Consulting Engineer shall pay damages as set forth therein.

ATTACHMENT 6A

M/WBE AND EEO POLICY STATEMENT

The Consulting Engineer agrees to adopt the following policies with respect to the CE Services:

MBE/WBE

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the MBE/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively soliciting bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to MBE/WBE contractor associations.
- (2) Requesting a list of State-certified MBEs/WBEs from BPCA and soliciting bids from these MBEs/WBEs directly.
- (3) Ensuring that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective MBEs/WBEs.
- (4) Where feasible, dividing the work into smaller portions to enhance participations by MBEs/WBEs and encourage the formation of joint venture and other partnerships among MBE/WBE contractors to enhance their participation.
- (5) Documenting and maintaining records of bid solicitation, including those to MBEs/WBEs and the results thereof. The Consulting Engineer will also maintain records of actions that its subcontractors have taken toward meeting MBE/WBE contract participation goals.
- (6) Ensuring that progress payments to MBEs/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives are developed to encourage MBE/WBE participation.

EEO

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing diversity programs to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts.

- (b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.
- (c) At the request of BPCA, this organization shall request that each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
- (d) The Consulting Engineer shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Consulting Engineer and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- (e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

APPENDIX 7

FORM OF CONTRACT ADMINISTRATION MEMORANDUM

APPENDIX 7

FORM OF CONTRACT ADMINISTRATION MEMORANDUM

**CONSULTING ENGINEER SERVICES AGREEMENT FOR THE
BATTERY PARK CITY FLOOD RESILIENCY PROJECTS**

Contract Administration Memorandum No. []

Date: _____, 20__

[Note: Dates and numbers to be adjusted as appropriate; Attachment pages to reference CAM number and date on the initial line of each sheet.]

This CONTRACT ADMINISTRATION MEMORANDUM (“**CAM**”) is made pursuant to Section 7.3 (Contract Administration) of the Consulting Engineer Services Agreement for Battery Park City Flood Resiliency Projects, between the Battery Park City Authority between the Battery Park City Authority, d/b/a Hugh L. Carey Battery Park City Authority (“**BPCA**”), a body corporate and politic, constituting a public benefit corporation, and [], a corporation organized and existing under the laws of the State of [] (the “**Consulting Engineer**”), dated as of [] (the “**Agreement**”), for the purpose of confirming the agreement of the parties as to matters of interpretation and application which have arisen under the performance and application of the Agreement. All capitalized terms used, but not defined herein, shall have the meanings defined in the Agreement.

Subject: []

Set forth below is a joint acknowledgment of BPCA and the Consulting Engineer with respect to the [] of the Agreement.

The parties hereby jointly acknowledge and agree as follows:

1. [];
2. [];and
3. [].

This CAM contains the entire agreement between the parties with respect to the [] under the Agreement and supersedes all oral negotiations and prior writings with respect thereto.

This CAM may be executed in any number of original counterparts. All such counterparts shall constitute one and the same CAM.

[Signature page follows]

IN WITNESS WHEREOF, the parties have caused this CAM to be executed by their duly authorized representatives as of the day and year first above written.

BATTERY PARK CITY AUTHORITY

By: _____
[Name] _____
[Title] _____

[CONSULTING ENGINEER]

By: _____
[Name] _____
[Title] _____

ATTACHMENT D

**MBE/WBE/SDVOB REQUIREMENTS, MBE/WBE & EEO POLICY STATEMENT AND
DIVERSITY PRACTICES QUESTIONNAIRE**

ATTACHMENT D

MBE/WBE/SDVOB REQUIREMENTS, MBE/WBE & EEO POLICY STATEMENT AND DIVERSITY PRACTICES QUESTIONNAIRE

CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE-CERTIFIED MBEs/WBEs/SDVOBs AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

NEW YORK STATE LAW

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations BPCA is required to promote opportunities for the maximum feasible participation of New York State-certified MBEs/WBEs (collectively, “MWBE(s)”) and the employment of minority group members and women in the performance of BPCA contracts. Pursuant to New York State Executive Law Article 17-B and 9 NYCRR §252, BPCA recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified SDVOBs.

Business Participation Opportunities for MWBEs

For purposes of this solicitation, BPCA hereby establishes the following MWBE participation goals, based on the current availability of MWBEs:

Overall goal for total MWBE participation: 30%

NYS-Certified Minority-Owned Business (“MBE”) Participation: 15%

NYS-Certified Women-Owned Business (“WBE”) Participation: 15%

A contractor (“Contractor”) on any contract resulting from this procurement (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the Proposer agrees that BPCA may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how BPCA will evaluate a Contractor’s “good faith efforts,” refer to 5 NYCRR § 142.8.

The Proposer understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the contract.

In accordance with 5 NYCRR § 142.13, the Proposer further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this RFP, such finding constitutes a breach of contract and BPCA may withhold payment as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a Proposer agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a Proposer may arrange to provide

such evidence via a non-electronic method by contacting Justin McLaughlin Williams at justin.mclaughlin-williams@bpca.ny.gov or 212-417-2337. Please note that the NYSCS is a one-stop solution for all of your MBE/WBE and Article 15-A contract requirements. For additional information on the use of the NYSCS to meet the Proposer's MBE/WBE requirements, please see the attached MBE/WBE guidance from the New York State Division of Minority and Women's Business Development, "Your MWBE Utilization and Reporting Responsibilities Under Article 15-A."

Additionally, a Proposer will be required to submit the following documents and information as evidence of compliance with the foregoing:

- A. An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to BPCA for review and approval.
- B. BPCA will review the submitted MWBE Utilization Plan and advise the selected Proposer of BPCA acceptance or issue a notice of deficiency within 30 days of award or receipt of any revision.
- C. If a notice of deficiency is issued, the Proposer will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to Justin McLaughlin-Williams at BPCA, by email at justin.mclaughlin-williams@bpca.ny.gov, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by BPCA to be inadequate, BPCA shall notify the Proposer and direct the Proposer to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- D. BPCA may disqualify a Proposer as being non-responsive under the following circumstances:
 - 1) If a Proposer fails to submit an MWBE Utilization Plan;
 - 2) If a Proposer fails to submit a written remedy to a notice of deficiency;
 - 3) If a Proposer fails to submit a request for waiver; or
 - 4) If BPCA determines that the Proposer has failed to document good faith efforts.

The successful Proposer will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to BPCA, but must be made no later than prior to the submission of a request for final payment on the Contract.

The successful Proposer will be required to submit a quarterly M/WBE Contractor Compliance & Payment Report to BPCA, by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

Business Participation Opportunities for SDVOBs

For purposes of this solicitation, BPCA hereby establishes an overall goal of 6% for SDVOB participation. A Proposer must document good faith efforts to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract and Proposer agrees that BPCA may withhold payment pending receipt of the required SDVOB documentation. The directory of New York State Certified SDVOBs can be viewed at: http://www.ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf. For guidance on how BPCA will determine a Contractor's "good faith efforts," refer to 9 NYCRR §252.2(f)(2).

In accordance with 9 NYCRR §252.2(s), the Proposer acknowledges that if it is found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, such finding constitutes a breach of Contract and Contractor shall be liable for damages as specified in the Contract.

Such damages shall be calculated based on the actual cost incurred by BPCA related to BPCA's expenses for personnel, supplies and overhead related to establishing, monitoring and reviewing certified SDVOB programmatic goals.

- A. Additionally, a Proposer agrees to submit a Utilization Plan with their bid or Proposal as evidence of compliance with the foregoing. Any modifications or changes to the Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised Utilization Plan and submitted to BPCA.
- B. BPCA will review the submitted Utilization Plan and advise the selected Proposer of BPCA's acceptance or issue a notice of deficiency within 30 days of award or receipt of any revision.
- C. If a notice of deficiency is issued, Proposer agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to Justin McLaughlin-Williams at BPCA, by email at justin.mclaughlin-williams@bpcanyc.gov, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by BPCA to be inadequate, BPCA shall notify the Proposer and direct the Proposer to submit, within five (5) business days, a request for a partial or total waiver of SDVOB participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or Proposal.
- D. BPCA may disqualify a Proposer as being non-responsive under the following circumstances:
 - 1) If a Proposer fails to submit a Utilization Plan;
 - 2) If a Proposer fails to submit a written remedy to a notice of deficiency;
 - 3) If a Proposer fails to submit a request for waiver; or
 - 4) If BPCA determines that the Proposer has failed to document good faith efforts.

The successful Proposer shall attempt to utilize, in good faith, any SDVOB identified within its Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to the Contract award may be made at any time during the term of the Contract to BPCA, but must be made no later than prior to the submission of a request for final payment on the Contract.

The successful Proposer is required to submit a Contractor's SDVOB Contractor Compliance & Payment Report to BPCA on a monthly basis over the term of the Contract documenting the progress made toward achievement of the SDVOB goals of the Contract.

Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the Proposer agrees with all of the terms and conditions of the attached MWBE Equal Employment Opportunity Policy Statement. The Proposer is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the Proposer, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The Proposer will be required to submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement, Form # 4, to BPCA with its bid or proposal.

If awarded a Contract, Proposer shall submit a Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by BPCA on a monthly basis during the term of the Contract.

Pursuant to Executive Order #162, contractors and subcontractors will also be required to report the gross wages paid to each of their employees for the work performed by such employees on the contract utilizing the Workforce Utilization Report on a quarterly basis.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.



Your MBE/WBE Utilization and Reporting Responsibilities Under Article 15-A

The New York State Contract System ("NYSCS") is your one stop tool compliance with New York State's MBE/WBE Program. It is also the platform New York State uses to monitor state contracts and MBE/WBE participation.

GETTING STARTED

To access the system, please login or create a user name and password at <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=7562>. If you are uncertain whether you already have an account set up or still need to register, please send an email to the customer service contact listed on the Contact Us & Support page, or reach out to Justin McLaughlin-Williams at justin.mclaughlin-williams@bpca.ny.gov or 212-417-2337. For verification, in the email, include your business name and contact information.

VENDOR RESPONSIBILITIES

As a vendor conducting business with New York State, you have a responsibility to utilize minority- and/or women-owned businesses in the execution of your contracts, per the MBE/WBE percentage goals stated in your solicitation, incentive proposal or contract documents. NYSCS is the tool that New York State uses to monitor MBE/WBE participation in state contracting. Through the NYSCS you will submit utilization plans, request subcontractors, record payments to subcontractors, and communicate with your project manager throughout the life of your awarded contracts.

There are several reference materials available to assist you in this process, but to access them, you need to first be registered within the NYSCS. Once you log onto the website, click on the **Help & Support** >> link on the lower left hand corner of the Menu Bar to find recorded trainings and manuals on all features of the NYSCS. You may also click on the **Help & Tools** icon at the top right of your screen to find videos tailored to primes and subcontractors. There are also opportunities available to join live trainings, read up on the "Knowledge Base" through the Forum link, and submit feedback to help improve future enhancements to the system. Technical assistance is always available through the **Contact Us & Support** link on the NYSCS website (<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=7562>).

For more information, contact Justin McLaughlin-Williams at justin.mclaughlin-williams@bpca.ny.gov or 212-417-2337.

MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES

EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

MBE/WBE AND EEO POLICY STATEMENT

I, _____ (the "Contractor"), agree to adopt the following policies with respect to the project being developed at, or services rendered to, the Battery Park City Authority ("BPCA").

MBE/WBE

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the MBE/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively soliciting bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to MBE/WBE contractor associations.
- (2) Requesting a list of State-certified MBEs/WBEs from BPCA and soliciting bids from these MBEs/WBEs directly.
- (3) Ensuring that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective MBEs/WBEs.
- (4) Where feasible, dividing the work into smaller portions to enhance participations by MBEs/WBEs and encourage the formation of joint venture and other partnerships among MBE/WBE contractors to enhance their participation.
- (5) Documenting and maintaining records of bid solicitation, including those to MBEs/WBEs and the results thereof. The Contractor will also maintain records of actions that its subcontractors have taken toward meeting MBE/WBE contract participation goals.
- (6) Ensuring that progress payments to MBEs/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives are developed to encourage MBE/WBE participation.

EEO

- (a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing diversity programs to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts.
- (b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.
- (c) At the request of BPCA, this organization shall request that each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
- (d) The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- (e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

Agreed to this _____ day of _____, 2016

By _____

Print: _____ Title: _____

_____ is designated as the Consultant's Minority Business Enterprise Liaison responsible for administering the Minority and Women-Owned Business Enterprises - Equal Employment Opportunity (MBE/WBE - EEO) program.

MBE/WBE Contract Goals

30% Minority and Women's Business Enterprise Participation

____% Minority Business Enterprise Participation

____% Women's Business Enterprise Participation

EEO Contract Goals (if applicable)

____% Minority Labor Force Participation

____% Female Labor Force Participation

(Authorized Representative)

Title: _____

Date: _____

Diversity Practices Questionnaire

I, _____, as _____ (title) of _____ company (the "Company"), swear and/or affirm under penalty of perjury that the answers submitted to the following questions are complete and accurate to the best of my knowledge:

1. Does your Company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives? Yes or No

If Yes, provide the name, title, description of duties, and evidence of initiatives performed by this individual or individuals.

2. What percentage of your Company's gross revenues (from your prior fiscal year) was paid to New York State certified MBEs/WBEs as subcontractors, suppliers, joint-ventures, partners or other similar arrangement for the provision of goods or services to your Company's clients or customers?

3. What percentage of your Company's overhead (i.e. those expenditures that are not directly related to the provision of goods or services to your Company's clients or customers) or non-contract-related expenses (from your prior fiscal year) was paid to New York State certified MBEs/WBEs as suppliers/contractors?¹

4. Does your Company provide technical training² to MBEs/WBEs? Yes or No

If Yes, provide a description of such training which should include, but not be limited to, the date the program was initiated, the names and the number of MBEs/WBEs participating in such training, the number of years such training has been offered and the number of hours per year for which such training occurs.

5. Is your Company participating in a government approved M/WBE mentor-protégé program?

If Yes, identify the governmental mentoring program in which your Company participates and provide evidence demonstrating the extent of your Company's commitment to the governmental mentoring program.

6. Does your Company include specific quantitative goals for the utilization of MBEs/WBEs in its non-government procurements? Yes or No

If Yes, provide a description of such non-government procurements (including time period, goal, scope and dollar amount) and indicate the percentage of the goals that were attained.

7. Does your Company have a formal M/WBE supplier diversity program? Yes or No

If Yes, provide documentation of program activities and a copy of policy or program materials.

8. Does your Company plan to enter into partnering or subcontracting agreements with New York State certified MBEs/WBEs if selected as the successful Proposer? Yes or No

If Yes, complete the attached Utilization Plan

¹ Do not include onsite project overhead.

² Technical training is the process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.

All information provided in connection with the Diversity Practices Questionnaire is subject to audit and any fraudulent statements are subject to criminal prosecution and debarment.

Signature of
Owner/Official
Printed Name of
Signatory
Title

Name of Business

Address

City, State, Zip

STATE OF _____

COUNTY OF _____) ss:

On the _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for the State of _____, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this certification and said person executed this instrument.

Notary Public

ATTACHMENT E

FORM OF CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (this "Agreement") is entered into as of _____, 2020, by and between THE BATTERY PARK CITY AUTHORITY (d/b/a Hugh L. Carey Battery Park City Authority, "BPCA") and _____ (the "Proposer"), each a "Party" and together the "Parties."

WHEREAS, BPCA issued a Request for Proposals for Consulting Engineer Services for Battery Park City Flood Resiliency Projects ("RFP") on November 11, 2020;

WHEREAS, the Proposer is interested in submitting a proposal responsive to the RFP (a "Proposal"); and

WHEREAS, in connection therewith BPCA is willing to disclose certain information to the Proposer, but only upon the terms and conditions set forth herein.

NOW THEREFORE, in consideration of and as a condition for furnishing the Confidential Information (as defined below), the Proposer and BPCA agree to the following, it being understood that they are also agreeing to direct their officers, employees, partners, representatives, advisors, agents, attorneys, and associates ("Representatives") to comply with the provisions hereof:

1. Confidential Information. For purposes of this Agreement, the term "Confidential Information" means any information that is made available to the Proposer by BPCA, or one of its Representatives, that is disclosed on BPCA's secure data website or any other folder or material marked as "Confidential".

Notwithstanding anything in this Section 1 to the contrary, the term "Confidential Information" does not include any information that at the time of disclosure by BPCA, or any time thereafter (i) is generally available to and known by the public (other than as a result of a disclosure made directly or indirectly by the Proposer or its Representatives in violation of this Agreement), (ii) is available to the Proposer or its Representatives on a non-confidential basis from a source other than BPCA, or (iii) is already known to the Proposer or has been independently acquired or developed by the Proposer without violating any of the Proposer's obligations under Section 2 of this Agreement.

2. Confidentiality; Disclosure. The Confidential Information will be kept confidential by the Proposer, and the Proposer agrees to protect the Confidential Information using the same degree of care, but no less than a reasonable degree of care, as the Proposer uses to protect its own confidential information of a like nature. Any analysis or work product that is based on the Confidential Information and developed by the Proposer is to be prepared for the exclusive use of BPCA, or any designee of BPCA. As a result, any such analysis or work product may not be reproduced or used by the Proposer for any other purpose without the express written consent of BPCA

The Proposer may disclose the Confidential Information or portions thereof to those of the Proposer's Representatives who need to know such information for the purpose of analysis or preparing a Proposal. The Proposer is not authorized to disclose Confidential Information to any Representative without (i) informing the Representative of the confidential nature of the Confidential Information, and (ii) securing the agreement of the Representative to a similar confidentiality obligation.

If the Proposer or one of its Representatives becomes legally compelled (by law, rule,

regulation, order, deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any of the Confidential Information, the Proposer must, where practical, provide BPCA with prompt prior written notice of the disclosure requirement so that BPCA may seek a protective order or other appropriate remedy or waive compliance with the terms of this Section 2. If a protective order or other remedy is not obtained, or BPCA waives compliance with the provisions of this Section 2, the Proposer, when compelled to disclose, must (i) furnish only that portion of the Confidential Information that, in accordance with the advice of its own legal counsel, is legally required to be furnished, and (ii) exercise reasonable efforts to obtain assurances that confidential treatment will be accorded the Confidential Information so furnished.

3. Return. Upon request from BPCA, the Proposer promptly will return or destroy (at the Proposer's option) all copies of the Confidential Information in the Proposer's possession in any form. The Proposer will keep confidential any Confidential Information contained in all copies of any analyses, compilations, studies or other documents prepared by or for the Proposer that contain or reflect any Confidential Information. If BPCA requests the return of its Confidential Information, then the Proposer must destroy all copies of its analyses, compilations, studies or other documents prepared by or for it that contain the confidential information in a manner that would allow its extraction or that would allow the identification of BPCA as the source of the Confidential Information or inputs to the analysis, etc. Upon notice that BPCA requests the return of its Confidential Information, the Proposer is not permitted to use it for any purpose.

Without limiting the generality of the foregoing, the Proposer agrees to erase, delete or destroy (in a manner satisfactory to BPCA in its sole discretion) any notes, documents, magnetic media and other computer storage, including but not limited to system backups, which contain any Confidential Information or information derived in whole or in part from any Confidential Information. The Proposer shall certify in writing such return or destruction, as the case may be, within fifteen days of BPCA's request.

4. Intellectual Property Rights. Nothing contained in this Agreement will be construed to grant or imply any right to the Proposer or any of its Representatives with respect to any intellectual property of BPCA (whether or not copyrighted or patented), including any uses related thereto, and all Confidential Information is the sole property of BPCA.

5. Entire Agreement; Amendment; Waiver. This Agreement constitutes the entire agreement of the Parties regarding access to and treatment of Confidential Information, and this Agreement supersedes all prior communications, representations, or agreements, verbal or written, among the Parties relating to the Agreement's subject matter. No provision in this Agreement may be waived or amended except by written consent of each Party. It is further understood and agreed that no failure or delay by either Party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise or waiver of a right, power or privilege preclude any other or further exercise thereof.

6. Remedies. If the Proposer commits a breach, or threatens to commit a breach of, of any material terms or conditions of this Agreement, BPCA will have the right to seek and obtain all judicial relief (including but not limited to specific monetary damages and interest, except that each Party waives any claim for consequential damages resulting from a breach of this Agreement) as may be ordered or awarded by a court of competent jurisdiction. The Proposer hereby acknowledges that legal remedies may be inadequate to fully compensate BPCA for a breach of this Agreement.

7. Beneficiary; Assignment; Governing Law. This Agreement is for the benefit of each Party and will be governed by and construed in accordance with the laws of the State of New York. No Party may assign or otherwise transfer its rights or delegate its duties under this Agreement without the prior written consent of the other Parties, and any attempt to do so without consent is void.

8. Term. This Agreement and all obligations under this Agreement continue into perpetuity.

9. No Warranty. For any information, including but not limited to Confidential Information, that BPCA furnishes or otherwise discloses to the Proposer, it is understood and agreed that BPCA does not make any representations or warranties as to the information's accuracy, completeness, or fitness for a particular purpose.

10. Authority. The undersigned individuals executing this Agreement represent and warrant that they are duly authorized to execute this Agreement on behalf of the Party on whose behalf they are executing this Agreement.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement as of the date first written above.

PROPOSER:

By: _____

Name: _____

Title: _____

BPCA:

BATTERY PARK CITY AUTHORITY

By: _____

Name: _____

Title: _____